IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DIVISION OF THE EASTERN JUDICIAL DISTRICT OF MISSOURI

UNITED STATES OF AMERICA, PETITIONER,

v.

STANDARD OIL COMPANY OF NEW JERSEY ET AL., DEFENDANTS

PETITIONER'S TESTIMONY

REBUTTAL

On behalf of the petitioner:

Mr. FRANK B. KELLOGG, Mr. C. B. MORRISON
Mr. J. HARWOOD GRAVES

On behalf of the defendants:

Mr. JOHN G. MILBURN Mr. MORITZ ROSENTHAL
Mr. JOHN S. MILLER, Mr. M. F. ELLIOTT, Mr. MARTIN CAREY, Mr. F. L. CRAWFORD, Mr. DOUGLAS CAMPBELL, Mr. C. W. MARTYN

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13568 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
January 5, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. John G. Milburn, Mr. F. L. Crawford, Mr. Douglas Campbell.

Pursuant to the following stipulation, the Government's counsel offered a certified transcript of Mr. A. J. Cassatt's testimony as it appears on pages 1775, 1776, and 1777 down to the name "Campbell," showing the appearances of counsel; and pages 1791 to 1888 of the record in the case of The Commonwealth *v.* The Pennsylvania Railroad Company, in the Supreme Court of Pennsylvania, together with the certificates of the clerk, or prothonotary, on pages 2403 and 2404, and the exemplification on page 2405, at the end of the record.

It was agreed between counsel that the testimony of Mr. A. J. Cassatt might be offered after the close of the case of the defendants and at the opening of the petitioner's rebuttal testimony, with the same force and effect as though it had been offered as a part of the original case of the Government.

It was further admitted by the attorneys for the defendants that A. J. Cassett appeared before a special master and testified in the case of Commonwealth of Pennsylvania *v.* Pennsylvania Railroad Company, a cause pending in the courts of Pennsylvania; that such testimony was given in the city of Philadelphia on the 20th day of March, 1879; and that no proof need be offered by the Government that said Cassatt was duly sworn and testified as appears in the record of said case, a copy of which said testimony is set forth herein.

It is further stipulated, however, by counsel that the certificate of the prothonotary attached to the said testimony was, by mistake of said prothonotary, made to include the case of Commonwealth *v.* The United Pipe Lines; that said Cassatt only testified in the case of Commonwealth *v.* The Pennsylvania Railroad.

The defendants object to the testimony, on the ground that it was given by a person who was not a party to the cause we are now trying (The United States *v.* The Standard Oil Company), because it was testimony given in a proceeding in which none of the defendants here was a party, and hence it is not binding upon any of said defendants; that there is no possible theory upon which said testimony is admissible as the admission of a co-conspirator, because it is merely narrative of past events.

The testimony of A. J. Cassatt follows:

13569 In the supreme court of Pennsylvania for the western district.

THE COMMONWEALTH
vs.
THE UNITED PIPE LINES. } No. 309, Oct. and Nov. T., 1878.

THE COMMONWEALTH
vs.
THE DUNKIRK, ALLEGHENY VALLEY AND PITTSBURGH RAILROAD COMPANY. } No. 310, Oct. and Nov. T., 1878.

THE COMMONWEALTH
vs.
THE PENNSYLVANIA RAILROAD COMPANY. } No. 311, Oct. and Nov. T., 1878.

Before J. B. SWEITZER, Esq., *Master and Examiner.*

13570 PHILADELPHIA, PA., *March 20th, 1879.*

Parties met at 10 a. m., at the Girard House, in room 20, pursuant to adjournment of March 8th.

Present: The master, George Shiras, jr., esq., and E. Coppee Mitchell, esq., for the Commonwealth. Hon. Wayne MacVeagh for the Pennsylvania Railroad Company, and Messrs. Patterson and Campbell.

A. J. CASSATT was recalled in the case of the Commonwealth vs. The Pennsylvania Railroad Company, and testified as follows:

Direct examination by Mr. SHIRAS:

Q. We requested that you bring a certain contract with the Empire Transportation Company and one with the Buffalo, New York and Philadelphia Railroad Company. Have you got them?—A. Here is a printed copy of the one with the Empire Transportation Company, and this was the one between the Empire Transportation Company and the Buffalo, New York and Philadelphia Railroad Company, which was assigned to the Pennsylvania Railroad Company upon the transfer of the Green Line property to the Pennsylvania Railroad Company.

Q. This is a copy?—A. Yes, sir. [Witness hands papers to
13571 Mr. Shiras.] There is an indorsement on the back, you will observe.

Q. Mr. Cassatt, was the contract that is set forth in this agreement between the Empire Transportation Company and the Buffalo, New York and Philadelphia Railroad Company subsequently modified or changed?—A. Not to my knowledge, sir. It was assigned to the

Pennsylvania Railroad Company at the time we bought out the Empire Line in October, 1877, or about that time. Will you allow me to look at it? [Mr. Cassatt reads over contract.] Yes, sir, this is the contract under which we are operating now; that is, so far as it relates to railroad transportation. That contract refers also to the construction of pipe lines by the Empire Transportation Company; we had nothing to do with that; only that part of the contract which refers to the furnishing of cars and transportation was assigned to us. It was understood that we should carry out the provisions of the contract referring to that part of the business.

Q. The part, however, that pertains to the transportation business has not been modified?—A. Not to my knowledge; no, sir.

Q. Recurring, Mr. Cassatt, to these statements produced here, contracts between the Pennsylvania Railroad Company and settlements passing between the Pennsylvania Railroad Company and the other railway companies, with respect to this oil traffic, and particularly these statements of the month of May, 1878, for instance, I notice in the first entry in the statement of that month a certain amount of crude oil was transported by the Pennsylvania Railroad
13572 Company, and marked on this paper "A. V. North, J. C." What do those words signify on the first left-hand corner?—A. I never saw any of those statements. I could not tell anything more about them than you can, I guess. It is not part of my business to see them and I may say I never have seen them to examine them.

Q. Do you know enough about the method in which those accounts are kept to tell us the meaning of those entries?—A. No, sir. Well, I could guess at this.

Mr. MacVeagh. We do not care about that.

The Witness. I could tell you probably. A. V., north of the junction, isn't it?

Mr. Shiras. What junction is that?

Witness. It is Allegheny Junction, I presume.

Q. Does this signify that the oil carried which appears in that entry came from points north of the Allegheny Valley Railroad, north of the junction?—A. North of the junction.

Q. Does the entry there of the amount charged on the crude, which I believe is entered there at 30.899 per hundred pounds, signify the charge made by the Pennsylvania Railroad Company for the carriage?—A. That I can't answer, as I say I am not familiar with those statements in the form in which they are made out at all. It is my business to make the rates and arrangements for transportation and notify the controller what they are, and he makes the statements. It would be utterly impossible for me to give time and attention to go over the details of those statements.

Q. You spoke in your testimony heretofore of the fact that
13573 an agreement had been reached between the trunk lines as to the rates at which the oil should be transported at or about the time that the Pennsylvania Railroad Company had entered into a contract with the Standard Oil Company already in evidence.

I wish to ask you, Mr. Cassatt, how the points that are known as common points were fixed? What were common points?—A. All points in the oil regions are common points from which oil is shipped. We do not use the term "common" any longer; that is a term used some years ago; there were common points made when there were rates made from what were called local points. That term is not used any more in our arrangements.

Q. When did you depart from that phraseology?—A. When we made uniform rates from all points in the regions; that was, I think, about 1875.

Q. Then, if I understand you, it is a characteristic of this agreement between these railroad companies that all oil is transported from any point in the oil-producing territory to the seaboard is regarded as starting from a common point?—A. I do not exactly understand that term, common points. It is understood that the rate shall be equal and uniform from all points in the region to the same points on the seaboard with this exception, that the rates on oil from the Bradford district are lower than from the lower district.

Q. Then there is a distinction between oil transported from the Bradford district and that from other districts of the oil country?—A. There is a difference in the rate; that is, the rate from the Bradford district on crude oil is lower than from the other dis-
13574 tricts, the distance being nearer somewhat, and it is also made lower because the oil is of an inferior quality and won't bear as high a rate of transportation. That is one of the reasons.

Q. Is that distinction observed, so far as you know, by the other carrying companies as well as your own?—A. Yes, sir; that is part of the understanding between the companies.

Q. What is that rate, Mr. Cassatt, at which that oil is carried and which is agreed upon?—A. What is the difference in rate?

Q. No; first, what is the rate from the oil country exclusive of the Bradford district?—A. On crude oil to New York?

Q. Yes, sir.—A. $1.40 per barrel is the tariff rate.

Q. What is it from the Bradford district?—A. 25 cents less.

Q. This rate given in this account of May, 1878, being 30.889 per hundred pounds, what would that come to at a barrel?—A. We count a barrel of crude oil at 300 pounds.

Q. So that this would be three times that?—A. Yes, sir.

Q. That would be 92 cents and six mills?—A. Yes, sir.

Q. This account between the Pennsylvania Railroad and the Philadelphia and Reading, already in evidence, shows, Mr. Cassatt, that 92 cents and six mills per barrel were charged. What became of the balance between that rate and your tariff rate?—A. As I said before, I don't understand this account at all, not as made out; and allow me to suggest that Mr. Justice would be the proper man to answer those questions. He could tell a great deal better than I could.

Q. We have no objections to your asking Mr. Justice. He
13575 sits near you. It don't matter much which answers.

(Mr. Cassatt consults Mr. Justice.)

A. Under our contract with the Reading Railroad Company, while we count the barrel of oil at 300 pounds in our settlements, and while the 45 gallons of oil do actually weigh about 300 pounds, by the contract which the Empire Line had with the Reading road, which was afterwards assigned to us, a barrel is counted at 360 pounds; and if you will divide 360 into 115 you will find it comes to about 30.889. As Mr. Justice called my attention to now, and which I recollect under that contract with the Reading Railroad, as I said before, we settled with them on the basis of 360 pounds to the barrel up to last November, when they asked for a modification of the contract on the ground that that bore heavily on them, and we agreed to modify it and charge for the actual weight.

Q. In respect to that oil that this account shows was transported from the junction and received as from different points on the A. V. R. R., north of that point, where does the A. V. R. R. Co. get its compensation for its carriage of this same oil?—A. We make settlements with them similar, I suppose, in form with the one we made with the Reading Railroad.

Q. That settlement is not included in the charges here?—A. Well, I think not. It does not show the proportion due the Allegheny Valley Railroad.

Q. Why?—A. Well, this is a settlement showing the Reading Railroad Company what is due it, and, of course, it would be unnecessary to state what was due the other companies.

Q. What does the Allegheny Valley Railroad Company
13576 get from your company for this transportation?—A. It gets, first, a terminal of five cents a barrel, which is taken out for the Allegheny Valley Railroad. It is a commencing charge, it is not terminal exactly; five cents a barrel is taken out and then the remainder of the rate is prorated on the average distance which we have agreed upon between us to be a fair average distance, and they get that portion, whatever it may be, of the rate.

Q. Is that the average distance between the points where the oil is shipped and the point to which it is carried?—A. No, sir. Their average haul out of the total or average distance from the point of loading to the Junction.

Q. What rate is it that you allow them?—A. We take the actual net rate after paying all rebates and drawbacks on the oil; then we deduct five cents which we set aside for them; then we prorate the remainder of the rate, taking the distance to the seaboard from the point of shipment, and we allow them their proportion based upon this average distance which is assigned to them.

Q. Then this charge in point of fact includes the charge of the Pennsylvania Railroad Company and the Allegheny Valley Railroad Company together?—A. This rate of 30.889 is the through rate to the seaboard, and that is divided up among the different roads that transport oil and divided in each case upon a different basis. You see in the case of the Reading Railroad we count a barrel at 360 pounds, or did then, and then allowed them their actual dis-

tance, took out certain terminals, &c. It was a separate understanding with each road.

13577 Q. You notice in the accounts furnished here for the month of May that this same first lot, which we take by way of specification of lot shipped from points north of the Junction, and taken at the Junction by the Pennsylvania Railroad, a special allowance made of five cents upon 6,332½ barrels, which is about half of the first shipment?—A. That is the amount paid out for lighterage in New York. Under our contract with the Standard Oil Company—and we do in fact for all shippers—we deliver this crude oil to any point in the harbor of New York or alongside of vessels, and this is what we pay out to have this work done.

Q. Do the other railroad companies do the same thing?—A. They do the same thing. You will observe in the contract with the Standard Oil Company—and, as I said before, we pursue the same practice with other shippers—we agreed so long as we had no wharves on deep water to deliver to any point in the harbor or alongside vessels.

Q. This same oil that was shipped in May and of which I have spoken, I notice that in the month of June the statement furnished here exhibits upon an amount of 12,557 barrels a rebate or reduction allowed of 22½ cents—what is that?—A. That is paid to the American Transfer Company.

Q. Where did they handle that oil?—A. We have an arrangement with the American Transfer Company by which we pay them 22½ cents on all crude oil received and transported by us. We pay that as a commission to them to aid in securing us our share of the trade.

13578 Q. Is the American Transfer Company a corporation, or is it a private association?—A. I believe it to be a corporation. It has a corporation name and the officers of a corporation.

Q. When did it come into existence, or when did you begin to deal with it in this way?—A. I think in February, 1878, we made an arrangement with them by which we paid them 22½ cents per barrel on all crude oil received by us for transportation. We did that in consequence of the other roads having done the same thing. In order to protect our interests and secure our share of the business we thought it best to do the same.

Q. Is it a Pennsylvania corporation?—A. I do not know, sir.

Q. Who are the officers of it?—A. Mr. Daniel O'Day is the general manager.

Q. Do you know any of the other officers?—A. Mr. Justice informs me George W. Girty is cashier. I do not know him personally. I do not think I ever saw him, but he is the cashier.

Q. Can you name any of the other officers or leading officials connected with it?—A. I can not, sir.

Q. Can you name any of the stockholders?—A. I can not; no, sir.

Q. This 22½ cents that you say you agreed to pay them; to what officer was it paid?—A. I believe the checks are made to Girty, cashier, Mr. Justice informs me.

Q. Was your contract with this American Transfer Company in writing?—A. We have no contract with them. There is a letter addressed to me, I believe, by Mr. O'Day, asking to have this allowance made them and setting forth the reasons why they
13579 thought they should have it, which I can produce, if necessary.

Q. We would like to have a copy.—A. I will send it to you; and I think I replied to him in writing, saying we would make it until further notice. It is not in the nature of a fixed contract. It is an arrangement.

Q. Will the nature of the arrangement appear from his letter and your reply?—A. I think it will, fully.

Q. What is the business of the American Transfer Company, as you understand it?—A. It owns pipe lines in various parts of the region, as I understand it.

Q. Do you know any parts of the oil company in which they have pipe lines?—A. I think in all the parts. It has pipe lines in the Bradford district; it has a pipe line running to Kane on the Philadelphia & Erie Railroad. I understand it owns and operates a pipe line at Pittsburgh, and the one which formerly belonged to the Conduit. I do not know whether that company is still in existence or not. I think the Standard operates it. I do not know this of my own knowledge, as I am simply stating what I understand to be the case.

Q. You have stated, Mr. Cassatt, that you deemed it politic or prudent to make this arrangement, the other railroads having made similar arrangements; how did you become informed of that fact that the other railroads had made such arrangements?—A. I was shown in February, 1878, I think, a statement of the monthly settlement made by the New York Central and Erie roads, in which
13580 it appeared that they paid an allowance or commission larger than the one that we paid to the American Transfer Company.

Q. Who exhibited to you those statements? Do you remember?—A. Mr. O'Day, I think.

Q. You say he showed you such statements, if I understand you?—A. He showed me the monthly settlements made.

Q. Did he state to you how long these contracts had been running with the other companies?—A. He stated to me that they had been receiving that allowance since the previous fall.

Q. Was Mr. O'Day the same Mr. O'Day who was present at the interview when the contract of October 17, 1877, was agreed upon?—A. I find upon refreshing my memory a little upon that that I can't say that Mr. O'Day was present at that meeting. I read over the testimony which I have given here and in which Mr. Acheson asked me the names of the gentlemen who were there. I think I named one or two who were not there. I think I made a mistake.

Q. You think that was true in the case of Mr. O'Day?—A. I don't think Mr. O'Day was present, and I don't think Captain Vandergrift was present on that occasion. He was probably on a subsequent occa-

sion, but not then. As I stated at the time, I could not recollect all the men who were there.

Q. Was there anybody there at that time who purported to represent this American Transfer Company?—A. No, sir; the American Transfer Company was not represented at that time, and I did not know of its existence at that time; I don't think I did.

Q. Is the Pennsylvania Railroad Company still operating
13581 under the arrangements of that contract with the Standard Oil Company as of that date?—A. Under that letter?

Q. Of October.—A. Yes, sir.

Q. Did you pay this rebate of 22½ cents upon all oil carried by your road?—A. Upon all crude oil carried by our road.

Q. Irrespective of the points from which it is shipped in the oil country?—A. Yes, sir; irrespective of that.

Q. To what point is this money remitted and paid to Mr. Girty? Where are his headquarters?—A. I do not know, sir. Mr. Justice informs me they are in New York.

Q. At the time you made this arrangement with the Standard Oil Company, of which you have heretofore spoken, was it a feature of that arrangement that the American Transfer Company was to receive a rebate or allowance of 22½ cents for oil carried?—A. No, sir; that question was not brought before us until February, 1878.

Q. I understand you, Mr. Cassatt, that this 22½ cents paid to the American Transfer Company is not restricted to oil that passed through their lines?—A. No, sir; it is paid on all oil received and transported by us, as I have before stated.

Q. What, by this subsisting arrangement between the companies, is the rate on refined oil from the refineries to the seaboard?—A. It is $1.90 per barrel to New York and 15 cents less to Philadelphia, $1.75 to Philadelphia and Baltimore.

Q. Please look at this May statement, and I observe here that
14,420 barrels of a given weight of refined oil is entered as having been carried from the Allegheny Valley Railroad south
13582 of the Junction to Communipaw, that refined oil would come, would it not, sir, from refineries along the Allegheny Valley Railroad between the Junction and Pittsburgh?—A. Yes, sir; mainly in and about Pittsburgh.

Q. Now, I notice that that refined oil, that particular lot which I now refer to by way of sample, is carried at a rate of 47,882 per hundred pounds. How much would that make a barrel?—A. That weight per hundred pounds is got at by dividing the rate per barrel by the assumed weight of a barrel.

Q. Which was how many pounds?—A. It is 340 pounds, which would make 1.62 and 8 mills. As we make the rate per barrel it makes very little difference whether we assume the barrel to the 340 or 380 pounds, because it works both ways.

Q. The difference between the exhibit which would show 1.62 and 8 mills was paid to the Pennsylvania Railroad Company for the carriage of this particular lot of oil, and the figures which you have

given as to the total rate $1.90 is paid to the Allegheny Valley Railroad Company?—A. I believe so. We prorate from the Junction then on the other roads each.

Q. As you explained before about the crude?—A. Yes, sir.

Q. In this statement, already referred to in the account between the Pennsylvania Railroad Company and the Philadelphia & Reading Company of the month of May, 1878, on this particular lot of 14,421 barrels which was carried to Communipaw from the A. V. R. R. south of the Junction, we notice that there is an allowance or deduction made here of $1\frac{3}{10}$ per cent—what is that?—A. That is decreasing it to the crude equivalent.

13583 Q. I notice that by some mode of calculation the barrels are converted into some corresponding amount of crude oil or supposed to be for the purposes of carriage—how is that done?—A. This rate of $1.90 on refined oil is made from the mouth of the pipe. We agree for $1.90 to transport a sufficient quantity of crude oil to the refinery in Pittsburgh to make a barrel of refined, and to transport that barrel of refined thence to New York. Now, it takes $1\frac{3}{10}$ barrels of crude (or we assume that that is the quantity which it takes) to make a barrel of refined oil, and the refinery having paid 35 cents to the A. V. R. R. Co. for each barrel of crude carried——

Q. That is carried from the place of shipment to the refinery?—A. Yes, sir; and it requiring $1\frac{3}{10}$ of crude to make a barrel of refined, we multiply 35 cents by $1\frac{3}{10}$ and we pay that back to the shipper who pays us $1.90 from the refinery to New York.

Q. That 35 cents is the rebate that you pay the shipper after the crude which has been converted into refined has been shipped east on your road?—A. It is refunded to him to cover what he paid to get the crude to the refinery, and that is done to carry out our agreement with him, which is that $1.90 shall cover that transportation.

Q. And it is allowed and paid him upon his shipment of refined east?—A. Upon his shipment of refined east, yes, sir.

Q. And which is how much on a barrel of refined?—A. Which is $1.90.

Q. Then how much does the rebate of 35 cents on the barrel
13584 of crude make on the barrel of refined?—A. It amounts to $45\frac{1}{2}$ cents. That is simply a method resorted to to carry out our arrangement by which $1.90 covered the transportation of the crude to the refinery.

Q. Does the arrangement whereby that rebate is allowed apply to all the other railroad companies, too? Do they make the same allowances?—A. Yes, sir; they make their through rate to the seaboard on refined oil cover the cost of transportation to the refinery, and I presume that they have the same plan which we have, viz, we allow that by their rate on the crude and then refund it to them after they ship their refined.

Q. Is the rebate or allowance the same, so far as you know?—A. I presume that it is. I do not know how that is; they pay back

whatever it costs to get to the refineries. It may not be the same, because the rate from the mouth of the wells to the refineries, in Cleveland, for example, may be more or less than 35 cents a barrel. Whatever it is they pay back.

Q. Now, we will refer to this account of May, 1878, and this same shipment of 14,421 barrels. We observe a special allowance with respect to it of 44½ cents. What is that further allowance?—A. It is an additional rebate paid to the receiver of the oil.

Q. To the receiver of the oil?—A. Or shipper of the oil—paid to the shipper. The net rate to New York at that time by agreement with the other lines was made $1 per barrel, and this 44½ cents was the additional rebate paid after paying 45½ cents crude equivalent to bring the rate down from $1.90 to $1.

13585 Q. When was that arrangement made by which it was brought down from $1.90 to $1?—A. What is the date of that settlement?

Q. This is May, 1878, this allowance was made.—A. I can't recollect exactly when it was made. It was made, whenever it was made, to take effect May 1; made some time probably during the early part of May.

Q. You think it was made to take effect as of May 1, 1878?—A. Yes, sir.

Q. We observe a further allowance of 6 cents paid for lighterage. That you have already explained?—A. That is not an allowance.

Q. It is so called in the paper—special allowance for lighterage.—A. It is the amount paid out for doing that work. The shipper does not get that.

Q. With respect to getting the oil to the ships?—A. To the different ships; yes, sir.

Q. We notice here, Mr. Cassatt, in the report of the account between the Pennsylvania Railroad Company and the Philadelphia & Reading Railroad Company, as of the month of July, that the further allowance is made as of the month of May of 20 cents a barrel on this same May shipment of 14,000 barrels and upwards. What allowance was that? The May account shows no other shipment from south of the junction, except one of 14,421 barrels. There appears to be a few barrels more, but evidently it is the same shipment.—A. I can't explain that now, sir; I don't understand it.

Q. The July voucher will show that, won't it?—A. This is the May account, as I understand it.

13586 Q. But it is in the July report, and goes back to the May shipment, and will appear in the July account?—A. You are figuring on the July?

Q. No, sir; that is the July statement you have before you.—A. Mr. Justice explains to me now that in July at Saratoga by an agreement among the trunk lines the rate was reduced to New York to 80 cents per barrel net, clear of all rebates. We learned at that time the fact, which the New York Central and Erie roads admitted, that they

had made this 80-cent rate from May, and under our arrangement with the Standard Oil Company we were to make the same rates that the other lines did. We therefore rebated to them back the 20 cents, refunded it to them.

Q. Was that shipment of 14,000 and odd barrels there a Standard Oil Company shipment?—A. I presume it was; yes, sir.

Q. Why did those companies put down the rates at that time to 80 cents?—A. I do not know what moved them to do it unless the trade required that it should be done. That is to say, the trade would not bear a higher rate. After we learned that this had been done we made an arrangement or an agreement with them that hereafter no rate should be made except on consultation with the other lines interested—no reduction should be made.

Q. Was that feature incorporated in your arrangements at this Saratoga conference?—A. I think that was the time that we had an understanding with the other roads that they would not make any concession to any of their shippers without consultation between the four trunk lines.

13587 Q. In order to save time I will put the question this way: Wherever in these accounts there is a similar entry of 20 cents allowed on back shipments that have been already reported in these accounts between the Philadelphia & Reading Railroad and Pennsylvania Railroad Company, it is inexplicable in the same way?—A. I believe it would be. I could not state that because there might be some other circumstances affecting it. I think I could state that it would be to the best of my knowledge. I have not gone over the papers.

Q. Would that correction tend to equalize in view of what the other companies had done? Did that go back to the first of May?—A. No, sir.

Q. This allowance of 20 cents was paid to the shippers?—A. Yes, sir.

Q. And in the case of these shipments of which we have inquired, that was a Standard shipment from their refineries near Pittsburg?—A. Well, I presume that it was, from the fact of this allowance having been made.

Q. Why would you infer it from the fact of this allowance having been made that it was a Standard shipment?—A. Because that particular allowance was made to the Standard Oil Company only. When I state the Standard Oil Company you will understand that I mean the Standard Oil Company or some of the organizations controlled by it, some one of the parties who guaranteed us the percentage of traffic in that agreement.

Q. And in the allowances by the Pennsylvania Railroad Company, you pay them to the Standard Company and they adjust it

13588 among their different interests, do they not, sir?—A. I think not in all cases.

By Mr. MacVeagh:

Q. Do you know really?—A. Well, I have a general knowledge of how it is done; I believe they have a variety of their organizations under their general organization, suborganizations.

Q. Does the Pennsylvania Railroad Company transact with them or with the Standard Oil Company?—A. We pay the rebates and make the allowances to the consignee of the oil, whoever that may be. For instance, at Philadelphia to Warden, Frew & Company; in New York there are several parties. Here, nearly all the oil is consigned to J. A. Bostwick & Company. Generally, I can state that our business is transacted with the party to whom the oil is consigned, whoever it may be, that is to the best of my knowledge; there may be exceptions to that, Mr. Justice corrects me. He says that on all shipments to New York consigned to any one of the various branches of the Standard Oil Company we settle our transactions with the Standard Oil Company direct; on shipments to Philadelphia we settle with Warden, Frew & Company.

Q. I observe, sir, that in the account between the Philadelphia and Reading and the Pennsylvania Railroad Company, of the month of July, 1878, that there was carried over the Allegheny Valley Railroad north of the Junction to Communipaw the amount of 61,358½ barrels of crude oil, and that on a portion of that, as appears in the account rendered, there was an allowance of 37½ cents, and on another
13589 portion of 22½ cents; what were those?—A. The allowance of 22½ cents was made to the American Transfer Company, as before stated; the 37½ cents was made up, first, of an allowance of 10 per cent to the Standard Oil Company on all shipments consigned to it—on all its own shipments, and then an additional allowance of 15 cents a barrel, which some time in July was agreed to with the other lines at a meeting at Saratoga. The allowance we actually made them was this: We paid 22½ cents on all oil to the American Transfer Company, and then on all which the Standard Company shipped itself we allowed them 10 per cent and 15 cents additional—10 per cent on the rate. Mr. Justice informs me that by some error that additional 15 cents was paid to the American Transfer Company through part of the month of July, but when the error was discovered it was adjusted between the Standard Oil Company and the American Transfer Company, and they transferred the amount over.

Q. We observe that some is charged at one rate and some at another.—A. That was an error in the fore part of the month, but the 15 cents on that particular lot was not charged together. It is merely a grouping of two items showing 37½ cents instead of one of 22½ cents and the other of 15.

Q. You paid 22½ cents on all oil, and 15 cents on part more?—A. Yes, sir; you won't find the 15 cents on that oil elsewhere.

Q. Was this arrangement that was made in July, 1878, to allow the Standard a further reduction of 15 cents a barrel entered into by all the companies?—A. It was agreed to by all the companies. The

agreement with the other companies was not that we should
13590 allow it to the Standard only, but that we should allow the additional 15 cents a barrel on shipments until further agreement was entered into. In point of fact, we did allow it to the Standard Oil Company and one other shipper.

Q. Who was that?—A. Malcolm Lloyd, of Philadelphia. I don't know whether we allowed that exact amount, but we made a corresponding concession in rates, he being the only shipper other than the Standard Oil Company who was not engaged in carrying oil in opposition to us to Buffalo and thence by canal; that was the cause of this further reduction in July.

Mr. MacVeagh. What was that?

A. The fact that an opposition route had been opened to New York by rail to Buffalo and thence by canal to New York enabled shipments to be made cheaper than by our line, and forced us to reduce rates; to make that additional concession in July apply to all shipments except those which were made by that other route in opposition to us. The one shipper who was not was Malcolm Lloyd.

Mr. Shiras. If I understand you, the other companies agreed that you should make that allowance?

A. We all agreed among ourselves that we would make that additional allowance. It was not specified on whose particular shipment we would make it. We might make it on all shipments, or we might make it on part of our shipments, but we could not go below that; that was the agreement.

Q. In this same lot of oil we notice a still further allowance of 14 cents on 13,481 barrels as of the month of July. What is
13591 that allowance?—A. That is the 10 per cent I mentioned a few moments ago; 10 per cent on the rate of $1.40.

Q. That would be on shipments of the Standard?—A. Yes, sir.

Q. And that is in addition to the 37½ cents?—A. No, sir; by an error that 15 cents is included in this case—is added to the 22½ cents paid the American Transfer Company; that was afterwards corrected. Of that 37½ cents 15 should have been added to the 14.

Q. By the settlement between the Pennsylvania Railroad Company and the Reading Railroad Company as of the month of August, 1878, we observe here that there has been a shipment carried to Communipaw from the P., T. & B.—A. Pittsburg, Titusville and Buffalo.

Q. A carriage of 31,137 barrels, and an allowance made to begin with of 32½ cents. What allowance is that?—A. That is refined oil.

Q. Yes, sir; what was it carried for per barrel?—A. You mean the net rate, or manifest rate?

Q. I mean the tariff rate.—A. $1.90.

Q. What was the actual rate?—A. If shipped to the Standard Oil Company at that time it would be 80 cents a barrel.

Q. It is billed at $1.51. Look at the rebates or allowances for that lot, Mr. Cassatt. The first one was 32½ cents; what was that?—A. That is the crude equivalent. That is the cost of getting the crude to

the refinery at Oil City where this oil was refined; the rate being 25 cents a barrel and $1\frac{3}{10}$ times 25 would be $32\frac{1}{2}$.

Q. How much is that on a barrel of refined?—A. $32\frac{1}{2}$ cents.

Q. You have spoken of this 6 cents lighterage—then there
13592 is one of $64\frac{1}{2}$ cents?—A. That should bring it down to 80 cents a barrel, which was the net rate.

Q. Then a final one of 13 cents, what was that?—A. The two together were necessary to bring it down to an 80-cent rate. The total deductions from $1.90 bring the rate down to 80 cents.

Q. Now, if you will look at the November account, Mr. Cassatt, you will find shipments there of refined oil 56,898 barrels. They begin again with an allowance of $32\frac{1}{2}$ cents.—A. It is the same.

Q. And then 6 cents lighterage?—A. Yes, sir.

Q. And then the 10 cents for terminal charges?—A. That is paid to the National Storage Company.

Q. Then the $64\frac{1}{2}$ and the 13 together?—A. Yes, sir; they are to reduce it to the 80-cent rate.

Q. Yes, sir; the 10 cents are not.—A. The $64\frac{1}{2}$ cents goes to the Standard Oil Company and the 13 cents, they having paid $1.[illegible] that brings it down to 80 cents; then there is a further allowance 10 cents to the P., T. and B. At this time before the month of November we made the arrangement with the P., T. and B. road, by which we paid them a specific rate per barrel for carrying the oil to Irvington, where it connects with the Philadelphia and Rea Railroad Company; that amount was deducted before prora with the other road, with the Reading Railroad, as shown in this receipt.

Q. What rate then per barrel was actually received or retained by the Pennsylvania Railroad Company on this shipment —
13593 A. 80 cents per barrel, that is what the shipper paid. We had to of course divide that rate with our connecting companies. We had out of that also to pay any terminal charges in New York.

Q. That 80 cents was then prorated between you and the other shipping railroad companies cooperating in the transportation of the oil?—A. Yes, sir; 26 comes out of the 80 before there is any prorate; there is a specific charge of 10 cents to the P., T. and B., 6 cents lighterage, and ten cents terminal New York. We prorate then only from Irvington instead of prorating from the point of shipment.

Q. There was another paper we requested to have produced; a statement of shipments in certain months.—A. You asked for statement of shipments from May 1st, 1877, to October 17, 1877. I have it here.

(Witness hands paper to Mr. Shiras.)

Q. Included in the 80 cents was a charge that the Pennsylvania Railroad Company had for the use of car service?—A. Certainly.

Q. And that was how much?—A. How do you mean?

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Q. What rate was that?—A. Of course over our own road was nothing; the other companies paid us 30 cents for car service and commission for doing business.

Q. And then in that case where you were transacting business with the other roads or dealing with them, that car service was to be deducted from this net amount given before—54—before you prorate with them?—A. That amount comes out, or rather it is not settled in that way exactly. It is prorated and then taken out afterwards, and then we deduct in our settlement 30 cents of what is due to them.

13594 Q. That would then actually leave, would it not, on these shipments a net sum of 35 cents per barrel for apportionment?—A. We don't make the settlement in that way; we prorate, and it comes out afterwards.

Q. It would amount to 35 cents and 20 1-00?—A. I didn't figure, but believe it would.

Q. What rate per ton per mile would that be?—A. I have not figured it up; you can very readily do it if you know the distance. I don't know the exact distance.

Q. At the time in July, 1878, Mr. Cassatt, when this reduction was made on refined oil, was there any corresponding or similar reduction made in respect to crude?—A. There was, yes, sir. It was crude that I stated. I think I stated the reduction on crude some time ago. I stated that we paid the American Transfer Company 22½ cents per barrel on everything, and we paid the Standard Oil Company in its own shipments and 15 cents per barrel additional.

Q. You were speaking of crude?—A. That applied to crude.

Q. Then, what were the rates actually left with respect to crude and with respect to refined?—A. On shipments of the Standard Oil Company, do you mean?

Q. Yes, sir.—A. 88½ cents per barrel.

Q. On what?—A. On crude oil.

Q. And what on the refined?—A. I have just stated that the refined we made at 80 cents clear of all drawbacks and commissions.

Q. How was that reduction made from $1.40 to 88½ cents?—

13595 A. It was made by an allowance of 22½ cents to the American Transfer Company, and by an allowance of 10 per cent to the Standard Oil Company according to that letter, and by an additional allowance of 15 cents, making 51½ cents reduction, which leaves a net rate of 88½ cents.

Q. Was that allowance on crude made to any other shipper than the Standard Oil Company?—A. Not an allowance of that amount exactly; we did make an allowance to one other shipper, as I before stated.

Q. That is to Mr. Lloyd, of Philadelphia?—A. Yes, sir; he being the only other shipper of crude over our road that was not running oil over this opposition route at reduced rates.

Q. Mr. Cassatt, do you know Lombard & Bush, who they are?—A. Yes, sir; I do. They are a firm of refiners in New York.

Q. They are what are spoken of here in the testimony as outside refiners; that is, not connected with the Standard?—A. They are not connected with the Standard Oil Company, I believe.

Q. Who represented them in their shipping matters—Mr. H. C. Ohlen?—A. He did to a certain extent. They represented themselves very often.

Q. When you bought out the Empire Line in the way you have already mentioned, were not these outside New York refiners holders of contracts with the Empire?—A. They were.

Q. Did not these contracts that they held with the Empire stipulate for equal rates with any other shippers?—A. They did.

Q. I think you stated that their contracts expired May 1st, 1878?—A. One or two of them April 1st, the remainder on
13596 the 1st of May.

Q. Did or did not the Pensylvania Railroad Company allow them and the Standard equal rebates or allowances up until the expiration of the contract?—A. They allowed them both equal rebates, 10 per cent on their shipments of refined and crude.

Q. After the first of May did you or did you not allow the Standard Company, and the Atlantic Refining Company, and Warden, Frew & Company, and the American Transfer Company, and the other several parties that are known as the Standard Oil Company or combination, a rebate for the business of the months of December, January, February, March, and April which was not given to the New York parties?—A. We did not allow them any rebate excepting the 10 per cent on their shipments. As I stated before, we allowed the American Transfer Company, a company owning pipe lines in the region, a commission of 22½ cents a barrel, taking effect February 1st. I mention that now because you mentioned in your question the American Transfer Company.

Q. Yes, I confused it as if it itself were a shipper. These other rebates and allowances which you have been explaining and to which your attention has been called in these particular accounts, you speak subject, of course, to your explanations with respect to them when you say that you allowed only the ten per cent?—A. We made them no allowances, excepting the 10 per cent during the months you named; up to the 1st of May we charged the Standard Oil
13597 Company exactly what we charged the other parties in accordance with the contracts the Empire Company had with them, and which we agreed to carry out.

Q. Up to the 1st of May, 1878?—A. Until the contracts expired.

Q. Mr. Cassatt, was not, and is not, this American Transfer Company identical with the Standard people? Is it not an instrument of theirs?—A. I have no knowledge on that subject just now.

Q. Isn't this allowance of 22½ cents to the American Transfer Company in effect a disregard of the agreement that these other

shippers were to have equal rates under these contracts with the Empire?—A. I don't think that it is, sir.

Q. In this account that has been furnished us by Mr. Justice of the crude oil shipments by the Green Line during the months of February and March, 1878, to New York, Philadelphia, and Baltimore, I notice an entry of an allowance of an aggregate total of $68,753.50 as paid to the American Transfer Company through Daniel O'Day, general manager. Is that the payment of this 22½ cents of which you have already spoken?—A. Yes, sir, that is; so Mr. Justice tells me.

Q. That would not be 22½ cents, that would be only 20 cents.—A. The first allowance was only 20 cents. It was afterwards increased to 22½ cents.

Q. Then, during the months of February and March, which this gives, it was only 20 cents?—A. I do not know when it was increased to 22½ cents, but some time in the spring or summer of that year.

13598 Q. This you have stated, Mr. Cassatt, that you agreed to and did pay this money upon being informed by Mr. O'Day that similar or larger sums had been paid by the other railroad companies to the American Transfer Company?—A. After seeing the papers under which the settlements between those companies and the American Transfer Company were made. I had them here in Philadelphia. They sent them here to me for inspection before I agreed to make that allowance.

Q. Mr. O'Day exhibited them to you?—A. He sent them to me. I had them in my possession for several days and sent them back.

Q. Did Mr. O'Day make a demand for the equivalent off your road?—A. He asked that we should make the same allowance by letters which you have asked me to produce, and which I will produce.

Q. In the account with the Pennsylvania Railroad Company with the Lehigh Valley Railroad Company for the month of August, 1878, we notice a shipment from Olean to Communipaw of crude oil of 30,644,400 pounds.—A. That would make 85 cents and a fraction per barrel.

Q. Where is that rate from, Mr. Cassatt? Is that the Emporium rate or the Olean rate?—A. There is no Emporium rate. It is prorated from the mouth of the pipe.

Q. Am I to understand that the rate you give there is the rate from Emporium or from Olean?—A. From Emporium, but it would appear that some reduction was made before this rate per hundred pounds was made.

13599 Q. Now you will find a drawback paid of $34,000, $41,000 less the $7,000, the Buffalo, New York and Philadelphia proportion. Could you tell who that drawback was paid to?—A. 49 cents went to the American Transfer and the Standard Oil Company under the arrangements which I have already explained.

Q. Could you give us the net rate per ton per mile upon that haul?—A. It amounts to about a cent and a tenth per ton per mile

on the net rate, and for November it is about the same, being 49 cents per barrel rebate on $1.15 rate from Olean.

Q. We notice, Mr. Cassatt, that by the abstract of the exports between the Pennsylvania Railroad Company and the Lehigh Company for the month of November, 1878, there was shipped from Olean to Communipaw 128,211½ barrels of crude oil at the rate of $1.15 per barrel and which earns, according to this statement, the sum of $147,443.55, and that the deductions are placed at the sum of $99,167.05. How much after those deductions were made was left to be prorated upon that lot of oil between the carrying companies per barrel?—A. About 38 cents a barrel.

(Contract between the Empire Transportation Company and the Buffalo, New York and Philadelphia Railroad Company, marked "Exhibit 44, Pennsylvania Railroad Company, March 20, 1879, J. B. Sweitzer, master.")

(Contract between the Pennsylvania Railroad Company and the Empire Transportation Company, marked "Exhibit 43, Pennsylvania Railroad Company, March 20, 1879, J. B. Sweitzer, master.")

(Adjourned to same place until tomorrow, March 21st, at 10 o'clock a. m.)

13600 PHILADELPHIA, *March 21, 1879.*

The same parties met at the same place at 10 a. m., pursuant to adjournment of March 20th, and examination of Mr. Cassatt concluded.

A. J. CASSATT, previously sworn, being on the stand.

Q. Mr. Cassatt, have you found the letters which you were to furnish this morning?—A. Yes, sir.

(Witness hands Mr. Shiras copy of letter dated February 15, 1878, being marked Exhibit 45, and a copy of letter dated May 15, 1878, being Exhibit No. 46.)

Q. Mr. Cassatt, in your testimony yesterday you stated, if I understood you correctly, that at the conference between the railroad managers that took place in July, 1878, at Saratoga, when the rates were cut down to 80 cents per barrel, that these rates were allowed to the Standard and its shippers and not to the outside shippers—am I right?—A. You are referring now to the rate of refined oil?

Q. Yes, sir.—A. I am not aware that there were any outside shippers of refined oil, so called. I do not know of any refiners in the region or in the west that were shipping refined oil by our road.

Q. Excepting those who belonged to the Standard?—A. Yes, sir; the reduction on crude oil rate, however, was made to apply only to the Standard Oil Company and to Malcolm Lloyd, of Philadelphia.

Q. Then I did apprehend you correctly. What was that
13601 reduction of the crude oil rate to the Standard?—A. It was an additional rebate of 15 cents per barrel.

Q. The open rate at that time to all shippers was how much?—A. $1.15 and $1.40, respectively.

Q. And the rate to the Standard was then how much?—A. It was 14 cents off the $1.40 rate, and 15 more, making 29, and 11½ and 15, making 26½ for the $1.15 rate.

Q. And then the refined rate was 80 cents?—A. 80 cents net to the Standard.

Q. And to all others $1.90?—A. $1.90 less 44½.

Q. $1.44½?—A. But there were no other outside shippers to my knowledge that shipped refined oil.

Q. Was there any answer directly by you to that letter, Exhibit 45?—A. I have asked my clerk who brought this up this morning to go down and see if there was, and if so to send a copy of it. If there was an answer it was simply agreeing to his terms until further notice. It may have been given verbally on some subsequent occasion.

Q. This letter to Mr. Downing of the date of May 15, 1878, being Exhibit 46, was written as a mode of giving directions in respect to the proposition contained in this letter of Mr. O'Day's?—A. Yes, sir; it was simply instructing him that we had agreed to this.

Q. These are correct copies?—A. Yes, sir.

(Exhibits 45 and 46 offered in evidence.)

Q. I understood you to say, Mr. Cassatt, that the nature of this American Transfer Company as to whether it is a Pennsyl-
13602 vania or New York corporation you don't know?—A. I do not know, sir.

Q. Do you remember when first your company came into contact with it?—A. I think the first knowledge I had of there being such a company was when Mr. O'Day in February asked this commission to be paid to them and explained to me what pipe lines they owned and controlled and what the other roads had been doing for them.

Q. It was in February, 1878?—A. I think so; I do not think I had any knowledge of this before. Up to that time I supposed the pipe lines which were controlled and owned by the American Transfer Company were controlled by the United Lines.

Q. When did these shipments by way of canal that were sent to Buffalo and of which you spoke yesterday begin?—A. I think sometime in July.

Q. What year?—A. July, 1878, or possibly earlier than that. I can't say positively.

Q. Could you, by reflection, give us a closer date than that, Mr. Cassatt?—A. I could only fix the date by the fact that this meeting at Saratoga was held in consequence of the canal line having been opened at reduced rates.

Q. Mr. Cassatt, on shipments made by the Imperial Company of Oil City, or from the Standard Oil Company at Pittsburgh, over the Pennsylvania Railroad and Allegheny Valley Railroad, and consigned to Warden, Frew & Company, Philadelphia, what rebates were paid?—A. At what time, sir?

Q. During the year 1878.—A. What part of 1878, because rates varied after July?

13603 Q. Say from July to November, inclusive.—A. From July to November there was a net rate made to Philadelphia of 66½ cents, 13½ cents less than the net rate to New York.

Q. Well, how in the earlier part of 1878 was it?—A. It was $1.00 less 13½ net; rebates were paid sufficient to bring the net rate down to 86½ cents.

Q. That is on refined oil?—A. Yes, sir.

Q. And how was it with respect to crude?—A. Let me explain. When I say the net rate I mean the net rate to the refiner, irrespective of the charge of getting the crude to the refinery, which was paid by the refiner; that is, the 35 cents rebate was paid by themselves. The crude oil was the same. The difference in the rate was 13½ cents to Philadelphia below the rate to New York which you have.

Q. That is $1.26½ then?—A. I wish to correct myself. [Witness refers to memorandum.] The tariff rate on crude to Philadelphia is 15 cents below the rate to New York. The net rate was, however, on all occasions 13½ cents less, which arises in this way; we deduct the 10 per cent from the gross rate.

Q. Those were the rebates that were allowed then?—A. Yes, sir.

Q. There was no such rebate allowed others?—A. There were rebates allowed to Malcolm Lloyd, who was the only other receiver of petroleum in Philadelphia.

Q. What were the rebates allowed him?—A. They were such as to bring his net rate down to within a few cents of the Standard rate.

13604 Q. With respect to these Standard rebates that were allowed on their shipments to Philadelphia of refined and crude, to whom were they paid?—A. To Warden, Frew & Company, of Philadelphia.

Q. To what member of that firm?

Mr. MacVeagh. Does he know?

A. I am not able to say, but I presume in the firm name. I do not know. That is, they were paid as they might direct themselves.

Cross-examination by Mr. MacVeagh:

Q. Mr. Cassatt, I want to direct your attention to a personal matter which was asked you to a certain extent. You were asked whether you had any knowledge that Mr. Vanderbilt, representing the New York Central, or Mr. Jewett, representing the Erie, had any interest whatever in the Standard Oil Company or any of its affiliated companies. I wish to extend that question to the other trunk lines. I wish you would state whether or not to your knowledge Mr. Garrett, or anybody representing the Baltimore & Ohio, had any such interest?—A. They have not to my knowledge.

Q. Mr. Garrett or Mr. King, representing the transportation department, or any other officer of that company?—A. Not to my knowledge.

Q. Then I wish you would state whether Mr. Scott or yourself or any other officer of the Pennsylvania Railroad Company had any such interest?—A. Never to my knowledge. I speak of absolute

knowledge as to myself, but as to Mr. Scott to the best of my
13605 knowledge and belief.

Q. And as to any other official of the Pennsylvania Railroad Company you speak to the best of your knowledge and belief?—A. Yes, sir.

Q. Has anything ever occurred to lead you to suppose that any such interest existed?—A. Never.

Q. I desire that question to be considered by you as searching and explicit as I can possibly make it.—A. I so understand it.

Q. Now, as to the history of the oil transportation. I wish you would state whether or not this oil about which we have been inquiring is, or is not, wholly produced in the State of Pennsylvania for which you have been competing?—A. It is not.

Q. What proportion of it is?—A. A part of it is produced in the State of New York. I can't state the exact proportion, but a considerable proportion.

Q. What district is that known as?—A. That is the Bradford district.

Q. How long has the Bradford district been producing oil in considerable quantities?—A. I think for about four years. I can't be positive as to that. I have forgotten when. I think the date of this contract, if I am allowed to refer to the date of the contract between the Empire Line and the Buffalo, New York, and Philadelphia road, will show that it was about that time that they first commenced to produce oil.

Q. When was your attention first directed as representing the Pennsylvania Railroad Company in its transportation business to the Standard Oil Company as a customer of the road?—
13606 A. My first connection with the oil business of the Pennsylvania Railroad Company was in the spring, I think, of 1873. At that time the Standard Oil Company was not shipping over the Pennsylvania Railroad, but was shipping over the Erie and New York Central roads.

Q. Shipping from where?—A. Shipping mainly from Cleveland.

Q. In small or considerable quantities?—A. In very large quantities. They were the largest refiners at that time in the country. Subsequently to that they consolidated with Warden, Frew & Company of Philadelphia, bought them out and paid them in stock. Warden, Frew & Company had been before that our largest customers. All other of our largest customers had failed. I think I am correct in stating that they had failed at or about that tine.

Q. They had ceased the refining business, at any rate, had they?—A. They had, I believe.

Q. Failed to ship in considerable quantities by your line?—A. I meant failed financially, and in 1875, I think it was, we made our first contract with the Standard Oil Company for the reason that we found they were getting very strong and they had the backing of the other roads, and if we wanted to retain our full share of the

business and get fair rates on it it would be necessary to make arrangements to protect ourselves.

Q. Up to that time had any arrangement, so far as you know, been made with the Standard Oil Company by the Pennsylvania Railroad Company?—A. None had been made; no, sir.

Q. It has been already stated that the Empire Transportation Company was the organization which conducted the oil
13607 transportation which passed over the lines of the Pennsylvania Railroad Company?—A. All the oil business except the refined from Pittsburg, which we did on what is called our slow line regular business.

Q. On the main line?—A. Yes, sir.

Q. All the rest of your oil transportation was made for your lines by the organization known as the Empire Transportation Company, was it?—A. Yes, sir; it was secured by them.

Q. In 1875 did the Pennsylvania Railroad Company secure its traffic from the Standard Oil Company directly, or through the Empire Transportation Company?—A. The contract was made directly with the Pennsylvania Railroad Company; the oil was carried by the Empire Transportation Company.

Q. Was that contract with the knowledge of the Empire Transportation Company?—A. With the knowledge of the Empire Transportation Company.

By Mr. SHIRAS:

Q. That is, you are speaking of the contract between the Pennsylvania Railroad Company and the Standard?—A. Yes, sir; of July, 1875. I think that is the correct date; July or August, 1875.

By Mr. MACVEAGH:

Q. I wish you would detail in your own way the history of that arrangement, how long it lasted, and what brought it to an end.—A. That arrangement lasted until March, 1877. It was brought to an end by the Standard Oil Company giving us notice that they desired to terminate it, and did terminate it.

Q. In March, 1877?—A. Yes, sir. I may want to correct that date of July, 1875. I have not looked at that contract for
13608 some time, and it may have been later. I think it was not, though. I think it was in July, 1875. I will refresh my memory by looking at the contract. I merely state now from recollection.

Q. During the continuance of the arrangement of 1875, calling it by that date, was the Standard shipping over other lines, competitors of yours?—A. It was.

Q. Over what other lines?—A. Over the New York Central and Erie railways, and during part of the time, during the latter part of the continuance of that contract, with the Baltimore and Ohio road.

Q. That is, it was dividing its transportation between these different roads?—A. Yes, sir. It was only some time after that contract had been entered into that the Baltimore and Ohio became a competitor for the oil business.

Q. About what time would you state that the Baltimore and Ohio became an active competitor to the oil business, to the best of your recollection?—A. I think it was during 1876.

Q. Then, from the year 1876, taking that as the date, were or were not the four trunk lines active competitors for the transportation of oil?—A. They were.

Q. Until now?—A. From that time?

Q. From 1876 were they all so situated as to share in the transportation of the oil business?—A. They were.

Q. And have they all shared in it?—A. They have.

Q. From that date?—A. Yes, sir.

13609 Q. State whether or not there was anything in the situation of the refining works or in its conduct of its business in the oil regions which gave the Pennsylvania Railroad Company any decided advantage in competing for that traffic over the other trunk lines, or whether the Standard could, if it chose, ship over the other trunk lines to the exclusion of the Pennsylvania?—A. It could do so, and in fact did so. From the spring of 1877 until October 17th they didn't ship a barrel over our road.

Q. Can you state any reason why the Standard should be willing to pay you a higher price for shipping its oil than it could secure its shipment for over the lines of your rivals or your competitors?—A. I know of no reason why they should do so.

Q. Have you, to the best of your knowledge and belief, ever shipped a barrel of oil for the Standard at less price than could secure a shipment of the same over the lines of your rivals?—A. To the best of my knowledge and belief, we have never carried a barrel of the Standard's oil at a lower rate than the rates of the other roads. I know of certain occasions when we got a little better rate.

By Mr. SHIRAS:

Q. That is, than the rates of the other roads to the Standard?—A. Yes, sir.

By Mr. MACVEAGH:

Q. What, in your judgment, was the occasion of the notice from the Standard to your company in the spring of 1877 that it would cease to ship oil over your lines?—A. They stated their reason, not per-

13610 haps in the formal notice, but in many interviews between us, to be that they objected to the Empire Transportation Company, which was the organization having charge of the oil traffic of the Pennsylvania Railroad and its connecting lines, being in the oil refining business as a competitor of theirs. They claimed that in many ways this gave the Empire Transportation Company the advantage, if they chose to take the benefit of it, and

believed that they did take advantage of them in the distribution of cars and in many ways.

Q. At that time were any of your competitors for the business of the Standard Oil Company engaged or likely to engage in the refining business as a competitor of the Standard?—A. No, sir; they were not. On the contrary, they protested strongly against our having any direct or indirect interest in or control over the refining business. They claimed that the fact that the Empire Transportation Company controlled a refining business gave us indirectly a control of the refining interest, and that gave us an advantage over them that they would not submit to.

Q. In other words, was or was not the complaint that you were annexing to the business of transportation, by the indirect mode of using the Empire Transportation Company as a refiner, the business of a manufacturer also?—A. They claimed that.

Q. And were thus at the same time assuming an unfair relation to the other transporting companies and to the Standard as a refining company?—A. That was their statement.

Q. Was or was not the effort to compel you to adopt that view the real cause of the struggle in the oil traffic in the
13611 summer of 1877?—A. It was.

Q. Did or did not the Pennsylvania Railroad Company endeavor for a number of months to maintain the right of the Empire Transportation Company to engage in the business of refining?—A. It did; from the spring of 1877 until October the 17th. It carried on a contest with the other roads, the object on the part of the other roads being to compel us to take the Empire Transportation Company out of the refining business.

Q. And did or did not the Standard join heartily in the effort?—A. It did.

Q. So far as your knowledge extends, was there any division of counsels whatever on that subject between the other three trunk lines and the Standard Company? Or were they all heartily in accord in the effort to compel you to cease from being a manufacturer by means of the Empire Transportation Company?—A. They were, I believe, entirely in accord on that subject.

Q. You stated before substantially that, and you also stated, as I recollect your testimony, that you supposed the United Pipe Line was a party to that arrangement. Have you any knowledge on that subject, or is there any correction of your testimony in that regard that you desire to make?—A. I really have no knowledge of the fact that the United Pipe Lines united with the other roads and the Standard Oil Company to make this warfare upon us.

Q. Do you know of any action upon their part discriminating against you or the Empire Transportation Company, of your own knowledge?—A. I do not. I stated that because I sup-
13612 posed them to be in accord with the other roads, for the reason that nearly all their oil was carried to the other roads. I do not know, though, that they ever discriminated in rates on oil

carried to our lines or connecting lines, or that they ever charged more for oil which was delivered into the cars of the Pennsylvania Railroad.

Q. Did they ever refuse facilities for transportation over your lines?—A. I do not know that they did. I believe they did not. Nearly all their oil was carried to the northern lines, and that was what I based my statement on before.

Q. I wish you would give, to the best of your judgment (and I haven't called your attention to this and therefore it must be a mere estimate subject to correction), the gross value of the tonnage to the Pennsylvania Railroad Company it was receiving from the Standard Oil Company before the break in the spring of 1877, or, if you prefer, state whether it is very considerable or inconsiderable.—A. It was very considerable indeed. It must have amounted to considerably more than half our oil traffic, probably 65 per cent of it.

Q. State whether it was a considerable or inconsiderable element in the capacity of your company to earn any adequate return on its investment for the oil business?—A. The oil business was a very important business to us.

Q. Was the business of the Standard a considerable or inconsiderable element in enabling you to earn any decent return upon your investment for that business?—A. The business of the Standard Oil Company was of very great importance to us.

13613 Q. In the exhibit presented by you yesterday, Mr. Cassatt, of the net revenue derived by the company from the oil business from May 1st, 1877, to October 17, 1877, I notice there is no division by months. I wish you would state whether or not there was any difference in the months of that period, or the periods themselves, between the beginning of it and the close of it, as to the profitableness of that business to the Pennsylvania Railroad Company?—A. There was a very material difference, sir. In the outset after the first month or two the Standard Oil Company and the other lines, for some reason best known to themselves, did not reduce the rates materially. We received good rates for the first two or three months, but after that each month was lower than the other, to the best of my recollection, and it was getting to be down to a point where it was no longer possible to carry. It was very evident if the contest continued it would get down to as low as the competitive rates on any other traffic, and probably paying rates. That was what alarmed us. It was not so much the rates that we were getting; it was what we saw in the future, although the rates we were getting at the latter part of the contest were very low indeed.

Q. Have there been instances of the result of such continued strife within your knowledge as engaged in the business of transportation?—A. Yes, sir, I could give you an instance to-day, for example.

Q. What?—A. To-day we are carrying grain from Chicago to New York for 15 cents, out of which we are paying 3½ lighter-

13614 age in New York, making 11½ cents for transportation, including car service. If you take off the 30 per cent, as these

gentlemen did yesterday, for car service, it leaves something less than two mills per ton per mile that we are getting.

Q. What is the cause of that rate, in your judgment?—A. Simply caused by competition with the other roads.

Q. Is that a paying rate?—A. I don't think it is a very paying rate. I don't think any railroad company could pay expenses on that rate.

Q. What is the condition to-day, as you understand it, of the coal-carrying business between the competing roads?—A. I observe by this morning's paper that the Reading Railroad Company has reduced its rates 35 per cent of the actual selling price on board—that is, from the mines—from Port Richmond, and that includes delivery by the Reading Railroad Company of the coal on board ship. The selling price on "T" coal I believe is $2.30, so that 35 per cent of that, or 80, would be the rate on "T" coal, or if the selling price would be $2.25 they got 35 per cent of $2.25 for transportation of the coal from the mines, including the lateral charges to Port Richmond, and including the cost of delivering that coal on board vessels, which is the result of competition.

Q. What would that afford, in a rough estimate, for transportation over the 90 miles of the Reading Railroad?—A. It is considerably more than 90 miles, I suppose. Their average haul must be 110 or 120, I should say.

Q. What would be the net amount in figures that they would be receiving for that?—A. Assuming the rate to be $2.25 on board, they would receive 35 per cent of that. They would receive 78 cents per gross ton, 2,240 pounds.

13615 Q. But is that for the entire coal, without anything being paid?—A. That is for the transportation of the coal from the mines to Richmond, and includes the cost of putting the coal from the car on board vessels. I may be wrong as to the price being $2.25, but I believe it is the general impression that the price will be $2.25 this month.

Q. Now, Mr. Cassatt, while this contest was going on between the Pennsylvania Railroad Company, on behalf of the Empire Transportation Company, and the three other trunk lines, on behalf of the Standard Oil Company, state who continued to ship over your lines?—A. The refiners known and spoken of here as the outside refiners, the refiners other than the Standard Oil Company.

Q. On what terms were those shipments made? That is, were they on terms which shared with you the loss of that struggle?—A. I don't think that made any loss to the refiners. The business was done in this way: the oil was bought in the oil regions by the Empire Transportation Company—that is, the crude oil—and was sold in New York to the refiners at whatever price they could get for it—that is, the Empire Transportation Company. I presume the refiners did not pay them more for their oil than they could afford to pay and make a margin. In fact, whatever was left as the difference in the selling price and the buying price was our freight.

I believe the refiners as a whole made money. In fact, several of them have told me that they did during that struggle make money, how much I do not know, but they certainly didn't make any loss.

We stood what loss there was.

13616 Q. And during that time the Empire Transportation Company was buying and selling oil and settling with you for the differences as the freight?—A. The Empire Transportation Company was buying oil in the region, selling it in New York, and settling with us for the difference. I should state that the Empire Transportation Company through its control of the Union Pipe Line had been for some time buying oil. All the Pipe Lines in the region had been in the habit of buying oil in order to get transportation. They bought the oil at the wells and sold it at the mouth of the pipe.

Q. Had the tendency of this buying been to increase or diminish, during the six months it lasted, your rates for carrying oil?—A. At the outset we got very nearly the rates we had been getting before the abrogation of the contract. Each month, I think I am correct in stating, the rates were less than the previous one, and it was drifting very rapidly into a condition of affairs where we probably would have got no rates at all as far as we could judge from experience in other competitive business.

Q. As an executive officer of the Pennsylvania Railroad Company, do you believe that company could have continued that contest without serious injury to its business?—A. I don't think we could. I think in a very short time we would have been carrying oil as low as oil is being carried to competitive points and as low possibly as we are carrying grain to-day. The peculiarity of all these contests is that they never get any better. They get worse as you go along.

Each road is trying to undercut the other constantly, and that
13617 results in a settling-down process which cuts the rates down to a very low figure very soon.

Q. You have spoken of the three trunk lines which compete with you for this traffic. Have you any knowledge of the rates allowed to the Standard during the continuance of the struggle by those lines?—A. I have not.

Q. Have you any judgment from the character of the business and the market price of oil at the time?—A. I know that they carried it at exceeding low rates. I am inclined to think they carried at lower rates than we carried.

Q. During that time?—A. Yes, sir; from information that I obtained subsequently.

Q. How, in your judgment, would the rates they carried for compare with the rates that have been given in evidence here as charged the Standard by you?—A. I think the net rates were much lower than any we carried for the Standard subsequently, I think they were much lower.

Q. I wish to understand you correctly. Do you mean to say, in your judgment, from your knowledge of the business, you believe

that the railroads that were then competing with you, the New York Central and its affiliated lines, the Erie and its affiliated lines, the Baltimore & Ohio and its affiliated lines, the Lehigh Valley, and the Reading Railroad companies carried oil for the Standard during that fight at less rates than you have been carrying it for the Standard since the fight?—A. From information which I believe to be reliable and which I have received since the termination of the contest, I believe they were carrying during the whole of the
13618 time at rates lower than ours were to our shippers at that time.

Q. And how would those rates compare in your judgment with the rates you have since allowed?—A. They were much lower than the rates we have since allowed to the Standard.

Q. As already given in evidence here?—A. Yes, sir.

Q. Was not this contest also injurious to the other trunk lines and were they not also growing weary of it?—A. It was not so injurious to them as it was to us for this reason—before this contest we got 52 per cent—I have the privilege of correcting this as it may be one per cent more or less—of the entire trade to the seaboard. The Baltimore and Ohio got 9 per cent, and the remainder was divided equally between the New York Central and Erie. The oil business was therefore of nothing like the importance to either one of those roads as it was to us. They could afford to lose their entire net revenue from the oil business without affecting their general net results anything like to as serious an extent as it affected ours. That is always the advantage that a road has of competing for business when it gets into a contest like this when it has a very small trade. It affects them very little, and it affects the road they attack very seriously. For instance, a road might have 10 per cent of a business of any particular trade and the other road 90; the 10 per cent which the one road had would be of very little importance to it, and it might lose all its revenue without being seriously affected. The road carrying 90 per cent might be ruined by the competition. That is the advantage that the other three roads had over us.

13619 Q. That is the point I wished to draw out by the question as to the importance or nonimportance of the oil traffic to your lines, but it answers equally well to have it brought out in this connection. Are each of these trunk lines the lines of other States?—A. They are all corporations of other States, although I believe they also have affiliated lines in this State.

Q. Was there any method of transportation except by rail during any part of the season competing with you?—A. During the summer of 1878?

Q. Previous to that; during the summer of 1877 was there any other route for the carrying of oil?—A. Yes, sir; there was. The oil was carried and has been for several years in greater or less quantities down the Ohio River and thence over the Chesapeake and Ohio Railroad to Richmond. Oil has been shipped, too, in considerable quantities by lake, in some cases direct from Cleveland to European ports

by lake through the Welland Canal. That route is always open during the summer. They can always ship oil from Cleveland to Europe either direct or to Montreal and thence in larger vessels than can go through the canal to any port in Europe.

Q. Requiring only transshipment from one vessel to another?—A. Yes, sir.

Q. What about the New York canal?—A. Oil was transported during the summer of 1878 by that method.

13620 Q. And not before that to your knowledge?—A. Yes; in previous years it has been carried from Cleveland to Buffalo by water and thence by canal to New York.

Q. In 1877?—A. Prior to 1877. I don't think it was done in 1877. It was not done in 1877 because the Standard Oil Company controlled all the refineries in Cleveland at that time, and under their contract with the different trunk lines I believe they were compelled to ship all their oil by rail.

Q. That is what I wanted to get at.—A. That is a route that was always open for transportation.

Q. Then in addition to the three trunk lines you have mentioned as your competitors there is a line down the Ohio River via the Chesapeake and Ohio Railroad to Richmond, and thence to Europe?—A. Yes, sir.

Q. There is also a line by the Welland Canal to Montreal and thence to Europe, and there is also a line to Buffalo and the Erie Canal to New York?—A. Yes, sir.

Q. You have already stated, as I understand it, that you believe during the continuance of this fight the Standard Oil Company controlled all the refineries of Cleveland, shipped all its refined oil by virtue of its contract with the other trunk lines by rail?—A. Yes, sir.

Q. Now this settlement of this fight was made in October, 1877?—A. October 17, 1877.

Q. Did the water communication remain open much longer after that, if you know, for that season?—A. The lakes usually close, I think, about the middle of November.

13621 Q. Do you know whether as a matter of fact after the settlement there was any oil shipped except by rail?—A. There was not; no, sir.

Q. During that season?—A. There was not.

Q. By the contract you put in evidence, which speaks for itself, however, there was to be a reduction of ten per cent on the oil shipped by the Standard?—A. Yes, sir; that is, not less than ten per cent.

Q. Now, how long did that arrangement of a deduction of 10 per cent only continue?—A. Up to the 1st of May, 1878.

Q. What new factors entered into the matter at that time which made any change desirable, if any? What new elements came into the question?—A. So far as we were concerned we followed the lead of the New York Central and Erie railroads in making concessions

after the first of May. They were convinced by the Standard Oil that deductions were necessary in order to keep the trade moving. They made the deductions; we followed.

Q. Do you know on what grounds they were induced to do that? What the representations were, of your own knowledge?—A. Not of my own knowledge; I do know.

Q. Your agreement was with the Standard that you would give them rates as low as long as they sent their oil over your lines as they received from your competitors?—A. Yes, sir; the understanding was that our rates should be as low as those of our competitors.

Q. I will repeat the question and put it in another form. Was there any obligation whatever on the Standard to pay you higher rates at any time than it could transport its oil for over the
13622 other roads?—A. I would like to refer to that letter. The understanding was, of course, that we would make rates in connection with the other trunk lines as low as the other trunk lines made them. The letter specifically provides that the rates shall be fixed by the trunk lines, and that those rates shall be "so fixed as to place them on a parity as to cost of transportation to shippers by competing lines."

Q. When did you first know that a reduction was to be made by the other trunk lines in favor of the Standard? At the 1st of May?—A. No, it was subsequent to the 1st of May. I can't fix the exact date.

Q. Sometime during that month probably?—A. Yes, sir; sometime during that month, I think. It was first brought to our attention by the Standard Oil Company stating that the New York Central and Erie had assented to this reduction for reasons that they had urged upon them at the time, and we made the same reduction. As I stated before, it has since been understood among the trunk lines that those reductions and changes in rates, whether advances or reductions, shall be made only on consultation in which the four trunk lines shall be represented. At that time that was not strictly adhered to.

Q. You learned that the two had made it, and you assented?—A. Yes, sir; we assented.

Q. And do you know whether the Baltimore and Ohio assented?—A. They assented subsequently also.

Q. Now, as to your conference at Saratoga, of which you have spoken, what was its character, and what were the reasons which operated on the representatives of the trunk lines at that time
13623 in making the reduction?—A. The cause of the reduction made at Saratoga was, that the route for oil by rail to Buffalo and thence by canal had been opened up at rates which we were convinced were much lower than we were then charging the Standard Oil Company, and we made the reduction to meet that rate. That reduction was made on a very careful consideration of the subject by the presidents of the three northern trunk lines, and after they had been con-

vinced that the reduction was necessary to meet the reduced rates by the canal.

Q. Was that reduction also assented to by the other trunk lines?—A. It was assented to by the Baltimore and Ohio Railroad. It was not represented at the meeting for the reason that Mr. King, who was to represent the company, did not get there in time. The meeting took place in the morning, and he arrived in the afternoon after the meeting had adjourned, but he assented to the reduction in rates.

Q. Who were the active parties, to the best of your knowledge and belief, in opening the additional competing line by Buffalo and the canal?—A. I could not name them all. I believe that nearly all of the so-called outside refiners in New York were in the movement, and the Equitable Pipe Line was also.

Q. You can state whether in your judgment it was the movement of the outside refiners.—A. Yes, sir; in New York.

Q. Was there any outside refiner in Pennsylvania engaged in it?—A. No, sir; not to my knowledge.

Q. What outside refiner is there that is a customer of your
13624 lines in Pennsylvania?—A. Malcolm Lloyd is the only one I believe that I now recollect. There are one or more small refineries at or near Pittsburgh, but I don't recall them now. I don't think they ship to the seaboard at all.

Q. How long did that reduction continue which was made at Saratoga in consequence of the opening up of this competing line?—A. Till the 8th of December of that year, which was about the time of the closing of the canal.

Q. What change took place then?—A. Then we went back to the rates that were in existence prior to July of that year, and we are now charging those rates.

Q. You went back because the competing line via Buffalo and the canal, which the outside refiners had opened and thereby reduced the rates, was closed by the season?—A. Was closed for the time being.

Q. You say those are the rates you are operating upon now?—A. Yes, sir.

Q. You have given in evidence a copy of a letter from Mr. O'Day as representing the American Transfer Company; I wish you would state whether or not you then regarded that company as having power to control shipments of oil either over your lines or away from them.—A. The American Transfer Company undoubtedly had it in its power to control shipments so as to divert them from the line of the Pennsylvania Railroad.

Q. What were your reasons for making the arrangement
13625 which Mr. O'Day demanded?—A. We made that because we thought it to the interest of our company to make as favorable an arrangement with the American Transfer Company as we could, at least as favorable as had been made by the other lines.

Q. You made them because you thought it to the interest of your company to make as favorable arrangements with the American Transfer Company as had been made by the other competing lines?—A. Yes, sir.

Q. Why did you think it to the interest of your company to make it as favorable as your competitors were making it?—A. The American Transfer Company had it in its power to divert traffic from our lines if we did not.

Q. Do you know of any reason why they should continue to divert oil in their control to your lines at higher prices than they were paying the other competing lines for the same business?—A. I do not.

Q. Mr. Cassatt, I find I omitted to ask you one question in its order. While the Standard Oil Company was extending its business and enlarging its power and control of the oil traffic, was there, to your knowledge, any effort made on the part of the Pennsylvania Railroad Company to induce the other trunk lines to combine as against the Standard?—A. There was no effort made to combine as against the Standard, but there were repeated efforts made to induce the other trunk lines to join in some arrangement by which the oil traffic might be secured at paying rates to the four trunk lines, and divided between those lines in proportions to be agreed upon, and by which equal rates should be charged to all shippers; 13626 we proposed various methods to accomplish this object; we suggested among other things that after we had agreed upon percentages, we might have a joint agent in the oil regions and issue bills of lading which would give us the right to ship oil over any one of the lines, but that joint agent should, in making the shipments, divide the business between the four trunk lines on percentages that might be agreed upon. We thought that was a feasible scheme, but the other roads differed with us in that respect; they thought that the Standard Oil Company, with its large control of the refining interests, could seek other outlets, and might, and probably would, cause us to reduce our rates for transportation far below what we ought to get for the business.

Q. What I meant in my question would be better expressed in a changed form. Did the officers representing the Pennsylvania road, to your knowledge, endeavor more than once to secure the co-operation of your competitors in some plan which would enable the railroads to control a division of the oil traffic, and to prevent the Standard from controlling it?—A. The Standard does not now, and never did control the divisions; they never attempted to, but we have made numerous efforts, and I suppose that is what you mean by the question, to induce the other trunk lines to adopt some means of carrying out the divisions agreed among themselves without assistance or aid of the Standard Oil Company, in which we were not successful.

Mr. SHIRAS. You have not located those efforts in any point of time. You mean before the making of the contract?

13627 A. Yes, sir, before the making of the contract, during the continuance of this contract.

Mr. MacVeagh. Were, or were not, those efforts made repeatedly during the continuance of the contracts of which you have already spoken?—A. Yes, sir; I ought to state the reasons given by the other lines, and I did partially, for not adopting our suggestions; they believed it would not be feasible, that the Standard Oil Company would be able to break up any arrangement of that kind we might make.

Q. Have you any knowledge of any power possessed by any one of the trunk lines, or all of them together, to compel the Standard to ship its oil except by what route it might choose to do so?—A. There was no such power; none of the lines had any such power.

Q. From your knowledge of the business of transportation can you suggest any method by which any such result could be reached?—A. I know of no such method except by agreement with them.

Mr. Shiras. Excepting by agreement with the Standard?

Witness. Yes, sir; the question was, how we could force the Standard to ship its oil by our lines, and I said we could not except by agreement with them.

Mr. MacVeagh. Had the percentage of the transportation which they controlled increased or diminished from the time you speak of when it was over one-half, up to the time when the contract was made with them in October, 1877?—A. My recollection is that during

13628 that contest we got not much more than 30 per cent of the entire traffic, and as the other lines carried for the Standard Oil Company only, they must have during that time got 70 per cent of the refining business, that is, that which goes to the seaboard.

Q. During that contest what was the effect of the competition between the Pennsylvania Railroad and the Empire Line on the one side and the other trunk lines and the Standard on the other upon the market at the wells as compared with its effect upon the market at the seaboard, if you know?—A. I do not, sir.

Q. How was the allotment that was actually made of the percentage by the arrangement that was made in October, 1877, reached? Who made those percentages, and how were they made?—A. By agreement between the four trunk lines. After several interviews on that subject and failures to agree upon percentages we finally did agree.

Q. Had these efforts to secure the agreement of the other trunk lines in the appointment of a joint agent and the other efforts you made in the direction you have indicated all preceded the making of that arrangement with the Standard?—A. They had; yes, sir.

Q. State whether or not, since that arrangement has been made with the Standard, there has been any voluntary reduction of rates to it by the Pennsylvania Railroad Company or any reduction not required by the reduction of your competitors for this traffic.—A. There has been no reduction made that we didn't think it was

necessary to make and that was not made by the other lines at the same time or before we did.

13629 Q. In connection with these rebates and allowances, I am not sure that the question I put upon one aspect of this case was sufficiently in detail. In this you have already answered that, so far as your knowledge and belief extends, no officer of the Pennsylvania Railroad Company or of any other companies which it operates was directly or indirectly interested in the Standard Oil Company. I wish to ask whether you intend that answer to deny any such interest as a shareholder or in any shape or manner whatever, and then I wish you would state whether or not, so far as your knowledge extends, any such officer was ever directly or indirectly interested by any contrivance or arrangement of any character or description in any of these rebates, in any allowances, in any drawback, in the receiving of any presents from the Standard Oil Company or from anybody with whom they were connected or from anybody whom you might suppose represented them in any shape or form.—A. To the best of my knowledge and belief, no.

Q. Now, Mr. Cassatt, I wish you would state what, in your judgment, would be the consequence to the Pennsylvania Railroad Company of refusing to make the same allowances to the Standard Oil Company which your competitors for the oil traffic make to them.—A. It would simply result in the state of affairs that existed in the spring and summer of 1877, and which was gradually getting worse; it would simply result in this, to the best of my belief, that in a very short time we would be carrying oil at ruinously low rates.

13630 Q. What percentage of the oil to be carried do you suppose you could secure at these rates to-day?—A. To-day we would get a very small part of it, if we should be forced into another contest with the Standard Oil Company; the result would be, as I said before, we would get low rates and a very small part of the traffic. We would have to encourage the building up of opposition refineries on the lines of our road, and I believe that in the course of time we would get a share of the tonnage, but necessarily at very low rates, unless by agreement we could put them up.

Q. In your judgment would such a policy be advantageous or injurious to the Pennsylvania Railroad Company?—A. It would be very injurious in my opinion.

Q. Would it or not result at once in diverting all the oil traffic controlled by the Standard Oil Company from your lines?—A. It would, undoubtedly.

Q. And would you not be dependent upon your success in building up competing refineries to get any considerable portion of that traffic?—A. We would.

Q. In building up those refineries would you not have to sustain them against the competition of the Standard in the oil market?—A. We would.

Q. Do you think that it would be safe for the Pennsylvania Railroad Company to again enter upon that enterprise, to the best of

your judgment, as one of its transporting officers?—A. I think it would be a very injurious thing for us to do in the interests of the stockholders and of the company.

Q. Mr. Cassatt, there are two or three corrections possibly to be made in your direct testimony. I don't know whether there are or
13631 not, but I want to call them to your attention. In the first place, my recollection is that you stated the Empire Transportation Company was not, to your knowledge, increasing its capacity in 1877. I wish to ask whether, upon reflection, you do or do not know—and I do not know which is the case—that they were actually, by leases and running arrangements, increasing their capacity in the spring of that year in Pittsburgh and elsewhere, and enlarging their interests in the refining business. Have you any knowledge on the subject?—A. In the spring of 1877?

Q. Well, in 1877.—A. In the spring of 1877 they were building this refinery here at Philadelphia; they were enlarging the refinery in New York. As to whether they had any arrangements with the refiners in Pittsburgh or were making leases there I do not know. My impression is that they did have some arrangement of that kind, but I can not speak of it of my own knowledge.

Q. Then you stated in your testimony as if the New York Central Railroad Company received all the oil that it received from the United Pipe Lines. Is that accurate, or did it as a matter of fact receive from the Octave and Pennsylvania Transportation Company, and other lines from Titusville?—A. I believe it did at that time, yes, sir; I think the Pennsylvania Transportation Company has ceased to do business, but at that time it was in operation and carried oil to the New York Central Railroad. I have no knowledge of the Octave Line at all. I believe there is such a line. While it carried oil, it no doubt carried oil to the New York Central Railroad, because it runs to connect with that road only, I believe.

13632 Q. Do you remember at the time of the negotiations between the Empire Transportation Company and the Standard Oil Company and the Pennsylvania Railroad Company, the position which the Standard took as to the advisability of the Pennsylvania Railroad Company purchasing the Union Pipe Line? Do you remember whether they urged and insisted that the Pennsylvania Railroad Company should purchase the Pipe Line, rather than that they should do it?—A. Yes, sir; as I said in my direct testimony, I think the Standard Oil Company did not wish to buy the Union Pipe Line; they wanted the Pennsylvania Railroad Company to buy it; it was necessary, it was explained, that it should be bought in order to close out our contract with the Empire Transportation Company; the question then came up, who should buy it; we insisted that the Standard Company should buy it and they urged us to do it.

Q. What was the extent of that line, have you any idea? Several hundred miles?—A. Three or four hundred miles.

Q. You can state whether they made that purchase of their own accord, and from their own wish to do it, or whether against their own wish, and upon the insistence of the Pennsylvania Railroad Company, that they should do it as part of the arrangement.—A. We insisted that they should do it; that we could not.

Q. And it was against their desire as first expressed?—A. They much preferred we should buy it.

Redirect examination:

Q. Mr. Cassatt, you have stated that this allowance of
13633 22½ cents which you made the American Transfer Company was made because you learned that the same, or even greater, allowance had been made in favor of that company for some time before, by the other trunk lines, and you have stated that the reductions upon the rates had been fixed at the time of the making of this contract in October, 1877, with the Standard Oil Company. When these reductions were made, were they at the same time, or subsequent to, reductions allowed that company by the other trunk lines? Are we to understand that the policy of the Pennsylvania Railroad Company with respect to the allowance to the Transfer Company, and with respect to the allowances to the Standard Oil Company, was dictated and controlled by the other trunk lines?—A. No, sir, I do not know; we have an equal voice with the other trunk lines in fixing these rates, and in the particular instance I speak of the concession was made first by the two northern trunk lines and we followed; subsequent to that time we had an understanding which now exists that no arrangements or rates would be made with the Standard Oil Company for the transportation of oil excepting at a meeting at which the four trunk lines would be represented, in order that their action might be simultaneous and that each line might have a full voice in the matter.

Q. Is that understanding, as it now exists, reduced to writing?—A. No, sir; simply an understanding amongst us that we will not deal separately with the Standard Oil Company; we will meet them always as a body.

13634 Q. State about when that understanding was arrived at.—A. It was in consequence of these reductions having been made without consulting with us.

Q. Did you regard the fact that these allowances had been made by the other trunk lines without consultation with you for a considerable period as creating an obligation on the part of the Pennsylvania Railroad Company to make these allowances for freight already carried?—A. It was an obligation, not perhaps in the light of an absolute obligation, but we thought it best to make as favorable rates with the Standard Oil Company as the other lines had done.

Q. Was the allowing of those rates or reductions to the Transfer Company and to the Standard Oil Company by these two northern trunk lines without consulting your company regarded by your com-

pany as a violation of the agreement of October, 1877, between the Standard Oil Company and the other trunk lines?—A. Well, hardly as a violation of the agreement, because the agreement mainly consisted in the division of the tonnage; they did not gain any additional tonnage by that possibly, but we thought it was not a proper way to make those concessions. I should state, however, and I call your attention to the fact, that you speak of our paying these rebates, or this commission rather, to the American Transfer Company on business already carried; the conversation which I had with Mr. O'Day and this letter which I received from him was in the early part of February; this letter that I received from him was dated July 15th, he therefore made a request that we should
13635 pay this commission in the early part of February; we held the matter in abeyance for some time, and did not agree finally to it until the 15th of May. That was the reason why in this case we paid rebates on business that had been carried two months previously.

Q. Am I to understand you, however, as testifying, Mr. Cassatt, that you regarded the allowance of these rebates and of this allowance to the American Transfer Company by these northern routes without consultation with the Pennsylvania Railroad Company as a violation of the understanding between the railroad companies made prior to October 17, 1877?—A. There was no understanding on that subject; I can hardly say, therefore, that I would consider it a violation of the agreement; it was certainly a departure from the general practice in these matters, where we generally consult before making any changes, and when the attention of the other roads was called to this they promptly agreed that hereafter they would not make any changes in the rates for transporting oil except at a meeting at which the four trunk lines would be represented.

Q. That agreement then as it now exists and your own judgment with reference to any changes grew out of the dissatisfaction of your company with their having made those changes?—A. Without consulting us.

Q. Mr. Cassatt, you have stated that one reason why in the consultation at Saratoga in July, 1878, you were driven to putting
13636 down the rates was that a new route had been arranged by outside refiners by way of Buffalo and the canal; what was it that drove those outside refiners to the constructing and arranging of that route; was it not the fact that they could not get the same rates over the trunk lines that were offered by them to the Standard Oil Company?—A. I believe that it was; we stated frankly—I did to the outside refiners, and also to Mr. Scott, the president of our company—that unless they would guarantee us the same quantity of oil, guarantee to ship over our line the same quantity of oil that the Standard Oil Company had guaranteed to ship, we could not make them the same rates; we would make lower net rates to the Standard than they got; I stated to them at the same time, however, that I didn't think the concession we

would make the Standard would be one that would drive them out of the business; we did not intend them to do so, and in the distribution of cars and facilities for transportation they would be placed on a strict equality with the Standard Company. They expressed themselves as dissatisfied with that; they said they would never agree to any arrangement by which they did not get the same rates as the Standard, and from that time forward they commenced to arrange in some way to get some other route to the seaboard.

Q. At the same time, did they not, Mr. Cassatt, make the request or demand that they should be permitted to put cars of their own on your road?—A. They did at a subsequent interview with Mr. Scott and myself at the office of the company in Philadelphia; we declined to allow them to put cars of their own on the road, for the reason that we had cars enough to do the business that we had
13637 just bought from the Empire Line; we declined to allow them to put cars on excepting at the legal rates.

Q. By the legal rates, you mean chartered rates?—A. I mean we were compelled to carry the cars of certain individuals at certain rates prescribed by law, and we would carry their cars at those rates.

Q. With respect to that portion of the oil traffic which you have described as seeking the seaboard down the Ohio River, and by means of the Chesapeake and Ohio Railroad to Richmond, that is a much longer route from the oil country to the seaboard than that presented by the trunk lines, is it not?—A. Yes, sir; it is a long route.

Q. What was it that drove the shippers who sent their oil by that way to use that roundabout and long route; was it not their inability to procure the carriage of their oil upon the same terms for which the Standard Company's oil was carried?—A. I don't know what their object was; I suppose their reason for shipping by that route was that they were offered lower rates; the Chesapeake and Ohio Railroad had no oil business and offered them very low terms to carry the oil.

Q. Lower rates than those they could procure from the trunk lines?—A. Lower rates than we were carrying for.

Q. Do you know what rates they procured by that route?—A. I don't know; we knew at the time; we thought we knew. It is sometimes very difficult to ascertain what rates are.

Q. How far is it from the point where this oil is produced to the port on the Ohio River by which this oil reached the
13638 Chesapeake and Ohio Railroad?—A. Huntington, I think, is the point where the oil is transshipped from the barges to the cars; how far below Pittsburg that is, I do not know.

Q. It is away below Wheeling, is it not?—A. Below Wheeling, yes, sir.

Q. And below Parkersburg likewise, below the foot of the Baltimore and Ohio Railroad?—A. Yes, sir.

Q. About 350 miles below Pittsburgh?—A. I really don't know; I should say that is further than it really is; I don't know; the river is very crooked and it may be a long distance.

Q. Who are the shippers that sent their oil to the market by that route; I mean of what class are they; are they other than the Standard?—A. Yes, sir.

Q. You have spoken, Mr. Cassatt, of your opinion of the power of the American Transfer Company to control traffic; had they, to your knowledge, any other source of power in that respect than the possession of the limited pipe lines, which you have spoken of as their property?—A. I don't know of any other.

Q. The influence, then, that you advert to as being possessed by them arises out of their ownership of certain pipe lines?—A. Yes, sir; they could have opened those pipe lines to shipments at very low rates by water, and to rival roads, and could have diverted a large quantity of oil from our lines if they had chosen to do so.

Q. What route by way of water would their pipe lines
13639 have taken the oil?—A. By the Ohio River; if they had very large inducements they could have got a large quantity of oil carried that way, and which would not only have affected us in the quantity of oil—the carriage of which we would have lost—but would probably have forced us to put our rates down to meet the competition of that route on all our other oil.

Q. You have stated, Mr. Cassatt, I think, once or twice—I think I put a question to you about its being, as you supposed, a corporation, but you did not know of what State; have you any information that you can give us with respect to the organization of the American Transfer Company, who its principal officers are, or its leading stockholders?—A. I don't know of my own knowledge anything about it, excepting that Mr. O'Day is the manager, and Mr. Girty, I was told yesterday, is the cashier.

Q. Where was Mr. O'Day's headquarters in connection with that business?—A. At Oil City.

Q. Have you any information, Mr. Cassatt, going to show that the owners and controllers of the American Transfer Company are the same persons who own and control the Standard Oil Company?—A. I have no knowledge on that subject, sir, at all. I never saw a list of the stockholders.

Q. Do you know from transacting business or otherwise, as such things are known, that this Mr. Girty is the treasurer of both the Standard Oil Company and the American Transfer Company?—A.

I am not aware of the fact, and indeed, I did not know of
13640 the fact that he was the treasurer of the American Transfer Company until Mr. Justice so informed me yesterday; the only officer of that company that I ever met to my knowledge was Mr. O'Day.

Q. Mr. Cassatt, you have spoken of the policy that has controlled the action of the Pennsylvania Railroad Company with respect to complying with the demands of the Transfer Company and the Standard Oil Company, and the effect of a contest with those companies on the part of the carrying company, and you have likewise, in reply to Mr. MacVeagh, stated some views with respect to the

effect upon the oil traffic; if hostilities should be renewed between your company and those companies touching that matter, I ask you whether, if the Pennsylvania producers were to construct refineries on the lines of the Pennsylvania Railroad Company, and bind themselves to ship all their product upon the lines of your road, would you give them as low rates as you give the Standard?—A. If they would guarantee us the same quantity—undoubtedly.

Q. Not otherwise?—A. Not otherwise, under that contract that we have now with the Standard Oil Company, unless we change our policy and give notice of the abrogation of that contract.

Recross-examination:

Q. Mr. Cassatt, your examination so far has been confined to the relations of the Pennsylvania Railroad Company as a carrier of oil. State whether, to your knowledge, it ever entered into any arrangement of any kind for the control of the oil market?—A. Never, sir.

Q. State whether it ever agreed with the Standard, or with
13641 any other oil company or railroad company, or with anybody else in any way to acquire control of the production or sale of oil in any manner or form?—A. Never had anything to do with that, sir.

Q. State whether or not it did, to the best of your judgment and belief, confine itself to the business of transportation?—A. It did.

Q. And, so far as your knowledge extends, whether the arrangements that were made with the Standard and other persons, with reference to the transportation of oil, were confined to its relations as a transporter?—A. As a transporter.

Q. Has there been any objection on the part of anybody connected with the Pennsylvania Railroad Company, as you know, to raising rates, or to getting better rates from the Standard, if it were possible?—A. Never. We have always endeavored to get the best rates we could.

Q. Is there any objection now upon the part of any officer of that company to your knowledge to having open rates? To giving equal rates to everybody, if your competitors were required to do the same?—A. On the contrary, if we could have any arrangement by which we could be assured that rates would be maintained by all of our competitors, and not cut by any of them, it would be just what we desire; we are satisfied that, with our facilities in this traffic, as well as in any other traffic, at the same rates, we can always secure our fair share of the business, and that is what we ask; nothing would give the management of the Pennsylvania Railroad Company greater pleasure than to have that accomplished, by law or otherwise, so it could be enforced.

13642 Q. Equally upon all competition for this traffic?—A. Yes, sir.

Redirect examination:

Q. You say that there would be no objection on the part of the Pennsylvania Railroad Company to have open rates and equal rates

to all, if the rival roads maintained the same, and did not cut them; what better method do you have now to maintain the equality of the rates as between you and the rival roads than you would have under the circumstances that you speak of, or under any circumstances?

Mr. MacVeagh. In other words, how do the Pennsylvania Railroad Company's arrangements tend to maintain the arrangements agreed upon?

Mr. Shiras. How do you get rates maintained in equality better now under your arrangements with the Standard?

A. Simply this; that all incentive to cut the rates—reduce the rates—is removed by the pool, or by the agreed division of the business between the lines; if a line has agreed to a certain percentage of the business, it gains nothing to exceed that percentage—it gains nothing by not reducing the rates in competition with other roads.

Q. Then I understand that it is with respect to the agreement to share the traffic in extent that the agreement between the railroad companies is effective?—A. Simply that is it; yes, sir.

Q. But how do you enforce the agreement that the rates are to be the same—what means have you to enforce that particular portion of the agreement as to the equality of the rates, which you
13643 would not have under any circumstances?—A. As I endeavored to explain before, the fact that each road has agreed to take a certain percentage of the business, and be satisfied with that—not wishing any more, removes all incentive on their part to cut the rates. If there were no division of the business, then each road would try to get as large a share of the traffic as possible, and resort to the general method of cutting rates to get it.

Q. But my question is this—in another form: What if these railroad companies equally abide now by verbal arrangements to divide this traffic in accordance with a certain plan of division, why would they not equally abide by any other arrangement as to the equality of rates?—A. Because in the one case the contract is one that can be enforced—that is, the division of the business can be enforced.

Q. How can you enforce that?—A. Because it can not be departed from without all the other roads knowing it, and breaking up the arrangement; if there were no agreement to divide the business and maintain rates any one of the roads might endeavor to obtain by secret rebates or commissions a larger share than the other roads would think it was entitled to, and it is the making of secret rates that is the real question to meet.

Q. Then the serious difficulty in regulating traffic which is reached by railroads is not in the making of a just agreement with respect to rates, but in what you call making secret contracts?—A. The
13644 difficulty is not in the making of the agreement, but in the maintaining or enforcing of it.

Q. But the difficulty is one that can be departed from by secret arrangements with respect to traffic?—A. Yes, sir; that is it.

Q. If all the roads in the United States were compelled by law to publish their tariff, and if it were made a misdemeanor upon the

part of any officer, punishable by law, to make any secret concessions from them, and such a law could be enforced there would be very little difficulty in maintaining rates.

Q. Mr. Cassatt, why could not an agreement be made between these trunk lines as to a division of the traffic without paying the rebates to the Standard and the American Transfer Company; why could it not be made and enforced between them just as well?—A. It could be if they would agree to it; we, as I said before, during the contest with the Standard Oil Company, and the other trunk lines, made repeated efforts to get them to agree to some arrangement by which the oil could be divided in quantity, and by which rates could be maintained; we suggested several plans which were entirely feasible, I think; they objected to going into any arrangement for the reason that they thought the power of the Standard was such that they would seek other outlets than the trunk lines.

Mr. MacVeagh. Was not the practical difficulty as stated by them this: That the Standard Oil Company, controlling 70 per cent of the gross traffic, would be more likely to make a route of its own to the seaboard utilizing such lines by water and land as were
13645 necessary, than to submit to the terms imposed by the railroad companies.

A. That was generally the idea, that the Standard Oil Company would have it in its power through arrangements for the transportation of its oil to take this business off the trunk lines in a body, and there was a good deal of force in what they said.

Mr. Shiras. The practical difficulty to which you advert, about the trouble of this matter of cutting rates by agreement with the railroad companies, is an illustration, is it not, showing your arrangements don't meet that difficulty. If these two northern trunk lines, having allowed this matter to the Transfer, and also to the Standard, without your knowledge and secretly—don't it illustrate the same difficulty as fully as any other questions of cutting rates?—A. Well, I think not; I don't know that they intended it to be a secret arrangement at the time it was made, and they certainly made no secret about it whenever attention was first called to it by the American Transfer Company, and we consulted them about it; they made no secret in regard to it then. I think the simple mistake there was acting without consulting the other two lines, and as I stated that has not occurred since.

Q. That you know of?—A. I believe not.

13646 Commonwealth of Pennsylvania,
County of Allegheny, Sct.

I, George Pearson, prothonotary of the supreme court of Pennsylvania, in and for the western district thereof, do hereby certify that the foregoing is a true and correct copy of the whole and entire testimony and exhibits produced before J. B. Sweitzer, esq., appointed master and examiner by the said the supreme court of Pennsylvania, at a meeting before him held in the cases wherein the

Commonwealth of Pennsylvania ex rel. the attorney-general is plaintiff, and The United Pipe Lines, The Dunkirk, Allegheny Valley & Pittsburgh Railroad Co., The Pennsylvania Railroad Co., The Lake Shore & Michigan Southern Railway Co., and The Atlantic & Great Western Ry. Co., are defendants, at Nos. 309, 310, 311, 312 and 313, October and November term, 1878, as full, entire, and complete as the same remains in the said the supreme court, in the cases there stated; and I do hereby further certify that the foregoing has been compared by me with the original records in said causes in my keeping and custody as the prothonotary of said court, and that the foregoing is a correct transcript from said records and of the whole of the originals thereof.

[Seal of the supreme court of Pennsylvania, western district, 1776.]

In testimony whereof, I have hereunto set my hand and affixed the seal of the said court at Pittsburgh, in the county of Allegheny, in the said western district of Pennsylvania, this fifteenth day of January, in the year of our Lord one thousand nine hundred and seven.

GEO. PEARSON, *Prothonotary.*

13647 CERTIFICATE OF RECORD.

COMMONWEALTH OF PENNSYLVANIA,
County of Allegheny, ss.

I, George Pearson, prothonotary of the supreme court of Pennsylvania, for the western district thereof, do hereby certify that the foregoing record, books 1 to 8 inclusive, is a true and faithful copy of the record and proceedings of the supreme court of Pennsylvania, in the western district aforesaid, in a certain suit therein wherein the Commonwealth ex rel. the attorney-general is plaintiff and The United Pipe Lines, The Dunkirk, Allegheny Valley & Pittsburgh Railroad, The Pennsylvania Railroad Co., The Lake Shore & Michigan Southern Railway Co., and The Atlantic & Great Western R. R. Co. are defendants.

[Seal of the supreme court of Pennsylvania, western district, 1776.]

In testimony whereof I have hereunto set my hand and affixed the seal of the said the supreme court of Pennsylvania, in and for the western district, at Pittsburgh, this fifteenth day of January, in the year of our Lord one thousand nine hundred and seven.

GEO. PEARSON, *Prothonotary.*

13648 I, James T. Mitchell, chief justice of the Supreme Court of Pennsylvania, do certify, that George Pearson was at the time of signing the annexed attestation and now is prothonotary of the said the supreme court of Pennsylvania, in and for the western dis-

trict, to whose acts as such full faith and credit are and ought to be given; and that the said attestation is in due form.

In witness whereof, I have hereunto subscribed my name this fifteenth day of January, in the year of our Lord one thousand nine hundred and seven.

JAMES T. MITCHELL.

I, George Pearson, prothonotary of the supreme court of Pennsylvania, in and for the western district, do certify, that the Honorable James T. Mitchell, by whom the foregoing certificate was made and given, was at the time of making and giving the same and is now chief justice of the supreme court of Pennsylvania; to whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; and that his signature, thereto subscribed, is genuine.

[Seal of the supreme court of Pennsylvania, western district, 1776.]

In testimony whereof, I have hereunto set my hand and affixed the seal of the said the supreme court of Pennsylvania, in and for the western district, at Pittsburgh, this fifteenth day of January, in the year of our Lord one thousand nine hundred and seven.

GEO. PEARSON.

13649 L. T. MESSNER, called in behalf of petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. MORRISON.

Q. What is your name?—A. L. T. Messner.

Q. Where do you live?—A. Binghamton, New York.

Q. What is your occupation?—A. At present, none.

Q. Were you ever in the oil business?—A. Yes, sir.

Q. With what company were you connected?—A. With the Tiona Oil Company.

Q. When did you commence with the Tiona?—A. July 1, 1900.

Q. Do you remember about the time that the Tiona Oil Company went to Troy?—A. I do.

Q. Were you connected with the company at that time?—A. In Binghamton.

Q. Yes—it is the same company, is it?—A. It is.

Q. Is Mr. S. T. Messner also connected with that same
13650 company?—A. He is; the general manager.

Q. Is he related to you?—A. He is my brother.

Q. What were the conditions prevailing in Troy, that led up to the putting of the Tiona Oil Company in that city in 1900?—A. It came to the notice of the head man in the Tiona Oil Company that there was no independent oil company in Troy, doing business there; and they went to Troy and endeavored to sell a man by the name of John McKenzie, who was running the Troy Oil Works, oil; and he stated

that he was an independent man and mentioned the names of certain parties in Pennsylvania whom he was buying oil from—which was not true.

Mr. CAMPBELL. I move to strike out that testimony, upon the ground that it is hearsay, and upon the further ground that the subject-matter of the testimony is not a proper subject of rebuttal; opening up new matter.

Q. What were the price conditions in Troy, as compared with Binghamton and other places taking the same freight rate, at about the time that the Tiona went to Troy?

Mr. CAMPBELL. That is objected to, upon the ground that it is not proper rebuttal; also as opening up new matter.

Mr. MORRISON. You went into the Troy business in the first instance?

Mr. CRAWFORD. You do this at your peril. We shall offer surrebuttal, that is all.

A. The price in Troy was 9 cents a gallon for refined oil, and Binghamton 7½.

Q. Was there any difference in the freight rate?—A. There was not.

13651 Q. Do you know whether or not that had anything to do with the Tiona going into Troy?—A. It had not.

Q. What price did the Tiona make when they went into Troy?—A. 7½ cents.

Q. What was the basis for that price?—A. Because the conditions in Troy, regarding freight, were the same as in Binghamton.

Mr. CAMPBELL. What was your position at that time, when you were with the Tiona?

WITNESS. At what time?

Mr. CAMPBELL. At the time that you are now testifying to.

WITNESS. I was a bookeeper in their office in Binghamton.

Mr. CAMPBELL. I move to strike out the testimony of this witness on the subject of price conditions at Troy at the time that he was a bookkeeper in the employ of the Tiona Oil Company at Binghamton, upon the ground that the subject-matter of the testimony is not within the knowledge of the witness and is obviously hearsay; also upon the further ground that the subject-matter inquired into is not proper rebuttal.

Q. When you say the freight conditions were the same, what do you mean by that? that the rate was the same from the refinery to Binghamton as it was to Troy?—A. It was.

Q. And, as I understand you, you put in the Binghamton price in Troy?—A. Yes.

Q. Mr. McMillan testified that the Tiona Oil Company came there and made a cut. That is your explanation, is it?—A. Yes, sir.

13652 Q. How did the prices range after that? After you put in the 7½ cent price, what did the Troy Oil Works do?

Mr. CAMPBELL. I object to that, upon the ground that the prices in Troy at that time are not within the personal knowledge of the witness; also upon the further ground that the subject-matter inquired into is not proper rebuttal.

Mr. MILBURN. May it be understood that all testimony in regard to Troy may be under that last objection?

Mr. MORRISON. Yes, that objection may stand to all of the questions.

A. Let me understand you. When the Tiona Oil Company went to Troy, the Troy Oil Works was selling for the same price as the Standard Oil Company—9 cents. The Tiona Oil Company started to sell for 7½ cents. The Standard Oil Company and the Troy Oil Works met the price.

Q. Was there any further reduction in the price after that?—A. There was.

Q. Who made the next reduction?—A. The Standard Oil Company.

Q. To what price did they go?—A. 7 cents.

Q. About when was that?—A. I can only say between July 1 and August 1.

Q. During the month of July?—A. Yes, sir.

Q. In what year?—A. 1900.

Mr. CAMPBELL. Do I understand that my objection that this testimony is not within the knowledge of the witness and is hearsay also applies to these questions?

Mr. MORRISON. Yes.

13653 Q. When the Standard and Tiona Oil Company cut the price to 7 cents, what did you do?—A. When the Standard and what?

Q. And the Troy Oil Works.—A. We followed.

Q. You followed 7?—A. Yes.

Q. Now, that, you say, was during the month of July; and were there any other cuts made during that summer or fall?—A. Yes.

Q. Who made the next cut?—A. The Standard Oil Company.

Q. How much did they cut the price?—A. One-half cent.

Q. What did you do?—A. We followed.

Q. You followed. That brought you down to 6½?—A. To 6½ cents.

Mr. CAMPBELL. What month was that?

WITNESS. July.

Mr. CRAWFORD. 1900?

WITNESS. 1900.

Q. Did you become manager of the works there at any time for the Tiona?—A. I did.

Q. When was that?—A. November 15, 1900.

Q. And you remained manager of the company for how long a time?—A. Five years and two months.

Q. Were there any more cuts made during the summer and fall of 1900?—A. That was as low as the tank-wagon price got.

Q. How long did that price prevail?—A. The 15th of December, 1900, the Tiona Oil Company voluntarily raised the price to 7 cents.

Q. What did the other companies do?—A. They followed the raise.

13654 Q. Were there any other raises made after that?—A. That price held until December, 1901, when it raised to 7½ cents.

Q. What did the other companies do when you made that second raise?—A. They followed our raise.

Q. Did it go any higher then after that?—A. In what period?

Q. During that year?—A. No.

Q. Following along after that can you give the range of prices down through from that time until you left the Tiona?—A. I can.

Q. You may give them?—A. The price of kerosene oil in Troy from December, 1901, to the fall of 1902 (I can not say what month or week) stayed at 7 cents and 7½. That is as positive as I can give you.

Mr. CAMPBELL. Is this the Tiona Oil Company's price?

WITNESS. Yes, sir; this is the Tiona Oil Company's price?

Q. And were the other companies selling at the same price during that time?—A. On the book; yes.

Q. Were there any cuts initiated after that by the Tiona Oil Company?—A. No.

Q. Were there any cuts initiated after that by either the Troy Oil Works or the Standard Oil Company?—A. At various times; yes.

Q. Can you give the times?—A. I can give you dates when cuts were made.

Q. Well, give them to us.

Mr. CAMPBELL. These prices made by the Standard Oil

13655 Company and the Troy Oil Works that you are about to testify to, came to your knowledge through hearing of them from your customers, or the trade?

WITNESS. Through seeing the tank wagon slips that were given to the customers.

Mr. CAMPBELL. And from being told by the customers what the prices were?

WITNESS. No; from seeing the slips.

Mr. CAMPBELL. Now, what is the question?

(Question read.)

Mr. CAMPBELL. I enter the general objection to the testimony upon the ground that it is incompetent and as hearsay.

A. June 1, 1903, the Standard Oil Company and the Troy Oil Works cut the price of oil from 10 cents to 9½ cents.

Q. What did the Tiona do?—A. Followed the cut.

Q. Were there any other cuts made?—A. There were.

Q. Just give them.—A. June 19, 1903, the Standard Oil Company and the Troy Oil Works cut the price to 9 cents.

Mr. CAMPBELL. May the same objection apply to all of this evidence?

Mr. MORRISON. Yes; the same objection.

Q. What did your company do?—A. Followed the cut. Those were all the cuts at that time. Then the market went up.

Q. Who first raised the price when the market went up?—A. The Tiona Oil Company.

Q. Was that true in every instance during the time that you were manager?—A. Every time.

Q. And, as I understand you, every cut that was made was
13656 made by the Standard and the Troy?—A. Yes.

Mr. CRAWFORD. He testified the first cut was made by his own company.

Q. After they went there and put in the Binghamton price, of course, I mean.—A. Yes.

Q. Do you know how this Troy Oil Company was held out to the trade there, as to whether it was an independent company, or what it was?—A. It was held out to be an independent company.

Q. Up until what time?—A. Up until after I left Troy.

Q. When you say "held out," what do you mean by that, Mr. Messner?—A. I mean, first, that it was the evident intention——

Mr. CRAWFORD. We object to that.

Mr. CAMPBELL. We object to the "evident intention."

Mr. MORRISON. Probably that is not competent.

WITNESS. I was told by my customers.

Mr. CRAWFORD. We object to that as hearsay and move to strike out.

WITNESS. All right.

Q. Go ahead.—A. I was at my home one night in November, 1900, when Mr. John McKenzie, who was the manager of the Troy Oil Works, purporting to be the owner, came to my house and begged of me to raise the price of oil, which at that time was 6½ cents, to a higher price, because, he said, he could not live at 6½ cents.

Mr. CAMPBELL. I object to that line of testimony on the ground that it is not responsive.

Q. Go ahead.—A. He furthermore said that he had to buy his oil and sell it again; that the price of oil delivered in Troy at
13657 that time was 6 cents; and asked me how could a man put out oil for one-half a cent a gallon.

Mr. CAMPBELL. I move to strike out the testimony of this witness on the question of Mr. McKenzie's statements, upon the ground they are inter alios.

Q. Who was Mr. McKenzie?—A. Mr. McKenzie was the manager of the Troy Oil Works.

Q. In that conversation did he say anything about the Standard Oil Company?—A. He said that he was obliged to buy some of his oil of the Standard Oil Company.

Mr. CAMPBELL. I move to strike that out as a statement of a statement of a conclusion and as immaterial and hearsay.

Q. Did he say anything about whether he was competing with the Standard, or whether he was independent of them, in that conversation?

Mr. CAMPBELL. I object to that question as leading. The witness has already been asked to state the conversation.

A. He said that he was obliged to compete with the Standard Oil Company.

Q. Do you know what trade he sought, to what customers he tried to sell, whether they were Standard customers or whether they were your customers?—A. They were the customers of the Tiona Oil Company.

Q. Were there any particular localities in Troy where the Tiona had a good trade?—A. There were.

Q. What, if anything, did McKenzie do in those localities?—A. He attempted to sell oil there.

Q. Did you have any other conversations with McKenzie?—A. Never.

13658 Q. Did you come in contact yourself with the trade there?—A. I did.

Q. In what way?—A. On the tank wagon.

Q. You went around at times on the tank wagon?—A. I did.

Q. Did you visit your trade frequently and your customers?—A. Every day.

Q. So that you knew what was going on in the trade?—A. I knew what the conditions were, yes.

Q. Do you know whether or not a part of the trade believed the Troy Oil Works to be independent?—A. Yes, sir.

Mr. CAMPBELL. That is objected to as incompetent.

A. They said they believed the Troy Oil Works to be independent of the Standard Oil Company.

Q. Did you learn from the trade whether or not McKenzie and his drivers held the Troy Oil Works out to be an independent?

Mr. CAMPBELL. That is objected to as incompetent.

A. The trade said McKenzie represented himself to be independent of the Standard Oil Company. His drivers did the same.

Q. Was he selling his oil under any particular name; that is, was there any company to it, or who did purport to be the owner of that business?—A. John McKenzie purported to be the owner of the Troy Oil Works.

Q. Do you know whether or not he finally put the Standard's name on his wagon?—A. He did.

Q. About when was that?—A. After I left Troy.

Q. Do you know what the occasion for it was?

Mr. CAMPBELL. I move to strike out the testimony of the

13659 witness as to what Mr. McKenzie did after the witness left Troy, as not within his knowledge.

Q. Well, what do you know about that?—A. I went to Troy and saw the name on the wagon.

Q. Do you know what the occasion of it was?—A. The passage of a law in this State requiring corporations to put their names on all wagons and places of business owned by them.

Mr. CAMPBELL. I move to strike out that testimony as——

Mr. MILBURN. Object to it on the ground there is no such law.

WITNESS. Then why did they do it?

Mr. MILBURN. You can't argue with me.

WITNESS. You can argue with me.

Mr. CAMPBELL. I object to it on the ground that the witness hasn't any personal knowledge.

Mr. MORRISON. I think, Mr. Milburn, you will find there is such a law.

WITNESS. I think you will, too.

Mr. CRAWFORD. Wait a moment. We want our objection.

Mr. CAMPBELL. We object to it upon the ground that it states the conclusion of the witness, and as clearly not within his knowledge, and the law, if there is any, is the best evidence. There is better evidence of the law than this witness's interpretation.

Mr. MORRISON. Oh, we are simply trying to fix a time. We are not trying to prove any law.

Q. Do you know where McKenzie got his oil?—A. From the Standard Oil Company.

Mr. CAMPBELL. That wasn't the question, Mr. Messner. The question was, Do you know?

13660 WITNESS. I do know.

Mr. CAMPBELL. I object to the question.

Q. Now, then, to satisfy these gentlemen, answer again who he got it of.—A. Of the Standard Oil Company.

Q. Did you know Mr. W. D. McMillan?—A. Not personally.

Q. You knew who he was, I assume?—A. I knew what position he held.

Q. What was his position while you were at Troy, with the Tiona?—A. He was manager of the Standard Oil Company for the Albany district.

Q. Mr. McMillian testified that in 1902 one day the Tiona Oil Company's tank wagon, accompanied by an escort of two salesmen, one of whom was on each side of the street, came to Albany, and that was their first trip to Albany, and that they solicited business from the merchants at 6½ cents a gallon—a cut of one cent below the Standard's price. He says there were three men—one on the wagon and one on each side of the street—and they went from store to store, and that that fact was communicated to him very quickly by various merchants and by his own people, and he says in fact he saw the wagon go by the door himself. Now, what is the fact about that wagon's going down there to Albany?—A. No wagon of the Tiona Oil Company ever went to Albany, with kerosene oil, from November 15, 1900, until the 1st day of January, 1906.

Q. Why do you give those dates?—A. Because that is while I was in charge of the business in Troy.

Mr. CAMPBELL. In charge of the business as tank-wagon driver?

13661 WITNESS. Both tank-wagon driver and city salesman.

Q. Did you keep books there?—A. We kept tank-wagon books.

Q. You know where your tank wagons were, do you not?—A. Every day.

Q. And you say that during that period, which I believe covers the period while you were manager, that that was not true. Now, did your tank wagon go to Albany for any purpose during that period?—A. It did.

Q. Now, you may state just exactly what it did do.—A. We delivered gasoline by the tank-wagon load to a shirt company in Albany.

Q. What company was it?—A. Wilbur-Campbell-Stevens Company.

Q. That was one customer that you had there?—A. That was one.

Q. Did you deliver to any other customer?—A. No other.

Q. You delivered to them in tank-wagon loads, as I understand you?—A. Yes.

Q. And how often did you go down there with your tank wagon to supply that customer?—A. Perhaps once a month; according to their needs.

Q. Did you have any other customer in Albany?—A. We did not.

Q. For any kind of oils that you handled?—A. For no kind.

Q. And did your wagons during that period go down there and solicit trade from store to store?—A. Never.

Q. Did they sell a gallon of oil or any other product except to this company that you have spoken of, during that period, in the city of Albany?—A. No.

Q. Did you have any storage tanks in Albany?—A. No.

Q. Did you keep any stock there?—A. No.

Q. You delivered to dealers in Troy from your tank wagon,

13662 did you?—A. Yes, sir.

Q. Do you know anything about the Paragon Oil Company?—A. I do.

Q. Where did they do business?—A. In Troy.

Q. When did they commence?—A. I can't say.

Q. Well, about when?—A. They were there when I went to Troy.

Q. Oh, yes; they were there. Well, who was running that?

Mr. CAMPBELL. I object to this entire line of testimony in regard to the Paragon Oil Company, on the ground that that is a matter that has not been touched upon in any way in the defendant's case, and is entirely outside of the defendant's case, and is not proper subject-matter for rebuttal.

Q. Who was running it, was the question.—A. What do you mean?

Q. The Paragon.—A. That is a hard question to answer.

Q. Well, who was managing it? Who was actually operating the wagon?—A. James Smith.

Q. Do you know where it got its oil?—A. From the Standard Oil Company.

Q. And what kind of a business was the Paragon doing?—A. Retail; house to house; consumer.

Q. They didn't go to the stores?—A. No.

Q. Did they go to the consumers?—A. Yes.

Q. Do you know what trade it solicited?—A. I do know.

Mr. CRAWFORD. How does he know?

Mr. MORRISON. Well, you can find out, on cross-examination.

Q. How is that?—A. Do I know?

Q. Yes.—A. They solicited trade in the neighborhood of stores that were buying their oil of the Tiona Oil Company.

Q. Do you know whether they solicited the customers of
13663 the Standard Oil Company or the Troy Oil Works?—A. They did not do a tank-wagon business.

Q. Well, did they solicit the trade that would naturally go to the stores that were supplied by the Standard or the Troy?—A. I can not say.

Q. Where did you see them, do you say?—A. I saw them all over Troy and in that vicinity.

Q. Do you know whether they made cuts in the retail price?—A. I do not.

Q. How long was the Paragon there?—A. When I left there it was there.

Q. It remained there during that entire time?—A. Yes.

Q. What equipment did it have?—A. 5-gallon cans.

Q. Any horses or wagons?—A. Yes, sir.

Q. Did it deliver except in the 5-gallon cans?—A. I never saw them deliver.

Q. You have seen the outfit on the streets, have you?—A. I have.

Q. Can you give us any more definite information as to the customers that this Paragon solicited? What I want to get at is whether or not this company solicited customers that would buy of your customers, or whether it solicited customers that bought of the Standard Oil or Troy.

Mr. MILBURN. He says he doesn't know.

Mr. CAMPBELL. I object to going over that matter again. The witness has already stated that he doesn't know what customers the Paragon Oil Company solicited.

WITNESS. I didn't say that. I said I do know they solicited customers in the vicinity of stores who were patronizing the
13664 Tiona Oil Company alone; made it their business to do so. I can give an instance.

Q. Do you know whether they solicited in the same way the trade that would naturally buy of dealers that had purchased of the Troy or of the Standard?—A. They did not.

Mr. CAMPBELL. I move to strike that out as not within the knowledge of the witness.

Q. Did you investigate the matter any to see what customers they were trying to get?—A. I did.

Q. What did you do in that respect?—A. I found out that they were making it an object for customers to buy of them by loaning 5-gallon cans—very fine 5-gallon cans—which no storekeeper could do.

Q. Did you have any conversation with Smith about it?—A. I never spoke to him.

Q. Do you know whether or not this Paragon was held out to the trade as an independent company?

Mr. CAMPBELL. That is objected to on the ground that it calls for the conclusion of the witness and as immaterial.

A. Mr. Smith claimed that he owned the business.

Q. How did you learn this?—A. From inquiring of customers whom I asked who they were buying their oil from, and why.

Mr. CAMPBELL. I move to strike out the testimony as hearsay.

Q. Were these conversations that you had with these people a part of your regular business there?—A. They were.

Q. Did he do much of a business?—A. He did a large business.

Q. Did it in any way affect your trade?—A. It did.

13665 Q. I think you said he continued there until you left?—A. Yes, sir.

Q. The last you knew of this company it was running there yet?—A. January 1, 1906.

Q. Well, you have been back there several times since that, haven't you?—A. Yes.

Q. Do you know whether it was still running or not?—A. I do not.

Q. And you don't know whether it ran after that time, after you left, or not?—A. I do not know.

Q. Were there any other companies selling oil in Troy aside from this that I have asked you about?—A. No companies.

Q. How large a place is Troy?—A. 74,000 people.

Mr. CAMPBELL. You have finished the line of testimony as to the Paragon Oil Company, Mr. Morrison?

Mr. MORRISON. Yes.

Mr. CAMPBELL. I would like to enter a general objection to the preceding testimony of the witness on the subject of the Paragon Oil Company, and move to strike it out upon the general ground, in addition to the grounds already stated, that it is not proper rebuttal.

(A recess was here taken until 2 o'clock p. m.)

13666 Q. I want to inquire a little more specifically about the prices that prevailed in the year 1905, at Troy. Can you give them?—A. Yes; I have them.

Q. You may do so, starting in at January.

Mr. CAMPBELL. Whose prices?

Mr. MORRISON. The Standard's prices, and the prices of the others.

WITNESS. They were identical within a day or so, you know. [Referring to a memorandum.] In January, 1905, prices ranged from 10 cents at the beginning of the month to 9 and 8 before the end of the month. In February, 8 and 7. March, April, and May,

7. June, 7, 6½, and 6. July and August, 6. September, 6, 6½. October, 6½, 7½. November, 8½. December, 8½.

Q. Who made the cuts from the January price downward, first?—A. The Standard Oil Company.

Mr. CAMPBELL. That is objected to as calling for hearsay testimony.

Q. Did the Tiona Oil Company follow the price down?—A. In every case.

Q. When the price commenced to go up, in the fall, as you have stated, which company was first to raise the price?—A. The Tiona Oil Company.

Q. Did the other companies follow it?—A. Yes.

Q. Referring again to the Paragon Company, where did Smith, the manager of that company, keep his horses and his equipment?—A. He kept his horses in the Standard Oil Company's barn in Green Island, and his equipment in their yard.

13667 Q. Was that during the entire time you were there?—A. No.

Q. How much of the time?—A. The last three years.

Q. Do you known where he kept them before that?—A. He had a place on North Adams street.

Mr. CAMPBELL. I would like to enter the same objection as to this testimony concerning the Paragon Oil Company—that it does not relate to any matter of defense gone into on behalf of the defendants, and not proper rebuttal.

Q. You spoke about the Troy Oil Works finally putting the name "Standard" on their wagons, but did not give the date. Do you know when it was?—A. I know that it was subsequent to January 1, 1906.

Q. The date you give in this answer is the date when you left Troy?—A. For good; yes.

Q. Then the name had not been put on there at that time?—A. No.

Q. I think that you said, in your examination, that later you saw the name on the wagons?—A. Yes; I did.

Q. Do you remember about when that was, when you first saw the name "Standard" on their wagons?—A. That was in September, 1907.

Q. That was when you first saw it?—A. That was when I first saw it.

Cross-examination by Mr. CAMPBELL:

Q. Mr. Messner, where do you reside now?—A. 135 Chenango street, Binghamton, New York.

Q. In whose employ are you?—A. In no one's.

Q. What is your business?—A. As a general proposition, an oil man.

Q. What particular branch of the oil business are you at
13668 present engaged in, if any?—A. In none.

Q. You are not at present engaged in any business?—A. No; not now.

Q. When did you first enter the employ of the Tiona Oil Company?—A. I can't tell you exactly the date. It was the latter part of June or the 1st day of July, 1900.

Q. And you began working for that company at Binghamton?—A. At Binghamton, New York.

Q. Your position with that company there at that time being that of a bookkeeper?—A. Bookkeeper; yes.

Q. And you retained that position as long as you were employed by the Tiona at Binghamton?—A. Well, that is a hard question; I did everything, you might say. It was a small company, and I kept the books, worked in the barrel house, and went out on the tank wagon.

Q. Then, if I understand you, on November 15th, was it?—A. November 15th.

Q. 1900?—you removed to Troy?—A. I took charge of the Troy station.

Q. Where was your office at Troy at that time?—A. The company had no office when I went there. The office was at the works, at the corner of Second avenue and Ninth street, Lansingburg, Troy, New York.

Q. Who had been managing the Tiona Oil Company there before you went?—A. L. J. Lindgren.

Q. What became of him when you took his place?—A. He went to North Carolina. He had lung trouble.

Q. Who else did the Tiona have there beside yourself?—A. S. T. Messner.

13669 Q. In the office?—A. When I went there?

Q. Yes, and after you were there?—A. Mr. Lindgren was the manager. He had two tank wagon men, and my brother was concerned in the construction of the plant.

Q. Which brother is that?—A. Samuel T. Messner.

Q. Was he at Troy?—A. He went back and forth from Troy to Binghamton. He had charge of the construction, the starting, of the plant, and general manager of the company.

Q. General manager of those two branches?—A. Yes, and Utica, New York.

Q. That is, he was your superior officer in that company?—A. Yes.

Q. Whom else, if any one, did you have there working along with you?—A. I had two tank wagon men from time to time. I changed them. Never anyone else, though.

Q. Two tank wagon men under you?—A. Yes.

Q. And you yourself drove the tank wagon from time to time?—A. I did.

Q. Assisted with the tank wagon work?—A. I did.

Q. And also acted as city salesman?—A. City salesman.

Q. You saw the trade continually, did you?—A. Continually.

Q. What active part did your brother, S. T. Messner, take in the management of that branch of the Tiona—I mean the branch at Troy?—A. After I went there?

Q. After you went there in 1900.—A. Well, I acted under directions from him, entirely.

Q. He himself visited the trade, to a certain extent?—A. No.

Q. If occasion arose to make contracts for the sale of oil, contracts in writing, would they be made by him or by you?—

13670 A. They would have been made by him.

Q. Then to that extent he did come in contact with your trade at Troy?—A. He would have.

Q. You left the Tiona when?—A. I left them at Scranton, the 10th of March, 1906.

Q. I am speaking of Troy?—A. I turned the business over to my successor the 20th or 22nd of December, 1905. I stayed there until the 1st of January, to break him in, and left there at that time.

Q. And from there you went where?—A. To Scranton, Pennsylvania.

Q. For the same company?—A. For the same company.

Q. How long were you at Scranton?—A. I worked for them two months and ten days.

Q. And then did you sever your connections with that company entirely?—A. I did.

Q. Is the Tiona Oil Company at Scranton the same company as at Troy?—A. Yes, sir.

Q. Both are under the general management of Mr. Todd, are they not?—A. No.

Q. Has Mr. Todd anything to do with the Scranton branch of the company?—A. I believe not, no.

13671 Q. And what charge did he take of the company at Troy?—A. Todd?

Q. Yes.—A. None.

Q. He had nothing to do with it?—A. No.

Q. Is the Tiona Oil Company at Troy incorporated?—A. Yes.

Q. And when was it incorporated, do you know?—A. I believe there was some law passed that the company should incorporate. I can't tell you. You probably know better than I do.

Q. The question is, Do you know when it was incorporated?—A. No.

Q. While you were in its employ, or before you went there?—A. Yes, while I was in its employ.

Q. It is a New York corporation, is it not?—A. It is.

Q. The Tiona Oil Company, of Scranton, however, is a Pennsylvania corporation, is it not?—A. Now, in so far as that is concerned, I can not say. It is managed from Binghamton, by the Tiona Oil Company of Binghamton.

Q. Who did you find in charge there when you went to Scranton?—A. John Baldwin.

Q. What was his position?—A. I presume he was manager of the Scranton branch of the Tiona Oil Company.

Q. Did you take a position under him or did you succeed him?—A. Over him.

Q. Over him?—A. Over him.

Q. And to whom did you report?—A. To the Tiona Oil Company of Binghamton.

Q. And that was in charge of your brother?—A. Yes, sir.

Q. Samuel Messner?—A. That is right.

13672 Q. Where did you get your oil, do you know?—A. We got our oil from the Cornplanter Refining Company of Strothers, Pennsylvania.

Q. Both branches to which you have referred?—A. Yes.

Q. The branch at Troy and the branch at Scranton?—A. Yes.

Q. That oil was shipped to you in tank cars?—A. Yes.

Q. Or in barrels?—A. Tank.

Q. And from there went into your storage tanks and was delivered by tank wagon?—A. Yes.

Q. That is, your method of delivery was the same as that of the Standard Oil Company in places where you operated?—A. As far as tank wagon delivery went, yes.

Q. Are both of these branches which operate under the name of the Tiona Oil Company owned by the Cornplanter Refining Company?——A. I can't say.

Q.——or only the one?—A. They are both in the same hands. I don't know who owns them.

Mr. MORRISON. Both what?

WITNESS. Both branches of the Tiona Oil Company. I presume it is the same men who own the Cornplanter. I don't know.

Q. You have more than one brother?—A. I have two.

Q. And what is the other brother's name?—A. W. F. Messner.

Q. Has he ever been in the employ of the Cornplanter Refining Company?—A. Yes; he is one of the largest stockholders in the Cornplanter Refining Company.

Q. And an officer of that company?—A. He is.

Q. And what is his position in the Tiona Oil Company?—

13673 A. He has none—Oh, now, wait, wait.

Q. Do you have any officers in that company?—A. Have we what?

Q. Has that company officers?—A. Yes; it has officers. I can't tell you. I know some of them. I don't know if W. F. Messner is an officer of the company or not.

Q. Has he been an officer at any time since its incorporation?—A. That I can't tell you.

Q. I understood you to say that you don't know whether the branch in Scranton, Pennsylvania, is incorporated or not?—A. I don't know.

Q. But that the branch at Troy is incorporated?—A. Yes.

Q. And was incorporated some time during the time you were in their employ?—A. I believe under the name of the Tiona Oil Company of New York State, or some such name as that.

Q. Do you know whether that stock is held directly by the Cornplanter Refining Company, or whether it is held by individuals connected with it?—A. I am not in position to know that.

Q. What office, then, has your brother, W. F. Messner, held in the Tiona?—A. I can not tell that he has held any.

Q. That is, you don't know whether he has or not?—A. I don't know.

Q. What has been his connection with it?—A. That I can't say; I don't know.

Q. You didn't report directly to him? He was not your immediate superior—W. F. Messner?—A. I reported to S. T. Messner.

Q. Do you know whether W. F. Messner is actively en-
13674 gaged in the oil business?—A. I do.

Q. Do you know whether he is engaged principally in the marketing end of it or in the refining end?—A. He is at the present time superintendent of the Cornplanter Refining Company, in the works.

Q. In the works?—A. Yes.

Q. Where?—A. At Strothers, Pennsylvania.

Q. How long has he been located there—he, individually?—A. All his life.

Q. How long has he held that position there, if you know?—A. He has held the position of superintendent for the last year. Previous to that, secretary of the company.

Q. And from time to time does he travel through the sections where the Cornplanter's oil is marketed by the Tiona or other marketing branches of the company?—A. Very little at present.

Q. When did he stop doing that?—A. A year ago. He became so actively engaged in the business in the refinery, the practical part, that he gave up the road work.

Q. But prior to a year ago he devoted some of his time to superintending marketing conditions through places where the Tiona Oil Company markets its goods?—A. Yes; he traveled and ascertained conditions.

Q. Was he actively engaged in the construction and the locating of these marketing plants, do you know, for the Cornplanters?—A. For the Cornplanter? No; I don't know. I don't know.

Q. Did he have anything to do with locating the Tiona Oil Company at Troy?—A. Yes.

Q. What part did he take in that? Was he the man who
13675 did it?—A. He took an active part. He and S. T. Messner were the men who did it.

Q. And he at that time was what? What position did he hold with the Cornplanter at that time?—A. Secretary.

Q. Of the company?—A. Yes.

Q. And his headquarters were at Strothers at that time?—A. Yes, sir.

Q. How about the plant at Binghamton? When was that started, do you know?—A. I can not say positively; no.

Q. That was before your time?—A. That was before my time.

Q. How old a man are you, Mr. Messner?—A. Thirty-two.

Q. And the time you went to Troy was about eight years ago?—A. Yes.

Q. You arrived in Troy in the middle of November, 1900?—A. No; I went there the 22d of October, 1900.

Q. I understood you to say November 15th?—A. I took charge as manager the 15th of November.

Q. What were you doing in the meantime? Simply getting settled?—A. Getting settled. Construction work. I was working on construction, while the other man had charge of the actual business.

Q. You didn't have actual charge of the marketing business of the company there until the 15th of November?—A. That is right.

Q. And when you took charge there I understood you to say that the Tiona's price for refined oil, sold by tank wagon at Troy, was 6½ cents?—A. Correct.

Q. How long did that price remain?—A. Till the 15th day of December that same year.

13676 Q. It remained at 6½ cents?—A. Yes.

Q. And then you increased the price one cent?—A. Half a cent.

Q. To seven cents?—A. Yes.

Q. December what?—A. 15th.

Q. Then how long did your price remain at 7 cents?—A. Until in October, 1901.

Q. October 11th?—A. Until in October, 1901.

Q. The exact date you haven't?—A. I haven't the date; no.

Q. And then it was increased to what?—A. Seven and a half cents.

Q. Where did you get these prices to which you are testifying, Mr. Messner?—A. From the records of the company at Binghamton. I made search there and found them.

Q. You have made search there recently?—A. Yes, sir.

Q. The prices of your company, prior to November, 1900, to which you have testified, were prices that were reported to the Binghamton office?—A. Yes. On tank wagons the agent in Troy sent to the company in Binghamton a regular daily report with the prices on, together with duplicate tank-wagon slips, for the oil he had sold that day.

Q. Is your knowledge, then, of prices at Troy prior to that time based upon such reports made from your Troy office to the Binghamton office?—A. Prior to what time?

Q. Prior to the time of your going to Troy?—A. Yes.

Q. When did I understand you to say that you raised your price from 6½ to 7 cents?—A. December 15, 1900.

Q. And your price of 7½ cents, which you say you made

13677 some time in October, continued throughout the balance of that year, did it?—A. October, 1901. Continued for six weeks.

Q. That was the price of 7½ cents?—A. 7½ cents.

Q. And then what became the price?—A. The Standard Oil Company then cut the price back to 7 cents.

Mr. CAMPBELL. That is not what I asked you. I move to strike that out as not responsive.

Q. What then became your price?—A. In December, 1901, 7 cents.

Q. And how long did that price continue?—A. Now is where the records fail. I haven't got it.

Q. You have no records?—A. Not with me.

Q. Through the year 1902?—A. I have in the fall of 1902. The records for 1902 were burned up by accident; so that in the fall we begin again on the records.

Q. Well, you find in the fall of 1902 that your price was 10 cents?—A. In the fall of 1902, no. February 1, 1903, the price was 10 cents.

Q. Well, what was your price in December, 1902?—A. I can't tell you.

Q. You haven't it?—A. I haven't got it here, no. I know that in November and December the prices began to ascend. That is all I can tell you.

Q. Whether they got to 10 cents in December, 1902, you don't know?—A. In December, 1902? I have no record of December, 1902.

Q. What were your prices for the early part of 1903?—A. February 1st to June 1st, 10 cents.

Q. And after that?—A. June 1st to 18th, 9½ cents.

Q. And after that?—A. June 19th to October 17th, 9 cents.

13678 Q. And after that?—A. October 18th to November 2d, 10 cents.

Q. And after that?—A. November 3d to December 10th, 10½ cents.

Q. You personally visited your trade at Troy, I understand you to say?—A. Yes.

Q. You visited the customers to whom you were selling from time to time?—A. All of them.

Q. And customers to whom the other companies were selling, soliciting their trade?—A. Yes.

Q. Your knowledge of what prices were made by these other companies was gained in the course of those visits among the trade, was it not?—A. Yes, in part.

Q. Well, did you have other means than that of ascertaining the price?—A. In case of a cut I had other means.

Q. You would hear of cut prices first from your customers, would you?—A. Not always, no.

Q. How would you hear?—A. In case of a cut in general, on the book, as we called it, on the tank-wagon book, my man would call me up over the telephone and tell me he had seen a slip of the Standard Oil or the Troy Oil Works at a certain place, and I would immediately investigate it.

Q. And in that way you would be apprised that the Standard had made a change in its tank-wagon price?—A. Yes, by seeing the ticket.

Q. I understand you to testify that your recollection is in respect to these various prices that you have named, that when the price went up at Troy it was the Tiona that made the advance, and that in the course of time the Standard would follow, is that
13679 true?—A. Correct.

Q. That is to say, you would advance the price for one reason or another, because the cost of your oil had advanced?—A. for that one reason.

Q. For that one reason?—A. Yes.

Q. And that you find about the same time the Standard's price would raise?—A. As a general proposition, yes.

Q. You mean by that, that you fixed the price at Troy, and that the Standard was obliged to follow you?—A. No, no.

Q. Or do you simply mean that the cost of oil increased, and that an advance would naturally follow?—A. That was our policy. We fixed the price going up.

Q. I also understood you to testify that the Tiona, after that one cut of a cent and a half, when they first began business at Troy, never cut the price?—A. Correct.

Q. And if it had done so, you would know it?—A. I would know it.

Q. And that applied to the years 1902, 1903, 1904, and 1905?—A. 1900, 1901, 1902, 1903, 1904, and 1905.

Q. And among other years it applied to 1902, 1903, 1904, and 1905?—A. Yes.

Q. That is to say, it applied to the year 1904 among others?—A. Yes.

Q. You don't know what cutting of prices may have been done by your tank wagons?—A. I do know.

Q. You don't know what cutting of prices may have been done by your brother, S. W. Messner?—A. I do know.

13680 Q. And you know that he didn't cut the price?—A. I know that he did not.

Q. Do you know your brother's handwriting?—A. I do.

Q. Was he the nominal manager of the Tiona Oil Company at Troy in 1904?—A. No.

Q. You were the nominal manager?—A. I was.

Q. Who is R. W. Munn?—A. R. W. Munn? A grocer in Troy.

Q. 16 King street?—A. I presume so.

Q. And is that a man's name?—A. That is—or was, that I know of.

Q. He was doing business in Troy in 1904?—A. I should say he was.

Q. How many stores did he operate?—A. R. W. Munn? I think one.

Q. He had one at 16 King street, and did he have one on Hutton street in Troy?—A. I think that was Frank L. Munn on Hutton street.

Q. And did he or his brother have a store on Sixth avenue?—A. Yes; both together.

Q. Were they customers of the Standard Oil Company?—A. They were.

Q. Prior to 1904?—A. Yes.

Q. Did you gain the trade of those three stores at the time?—A. For one time, yes.

Q. For about a year after September 24, 1904?—A. I can't say.

Q. Did it extend over a period of a year?—A. I can't say that; I don't know.

13681 Q. What inducement did you offer them to gain their trade from the Standard?—A. Cut in price.

Q. (Handing witness paper.) I will ask you to look at that agreement and state what that is. State whether you have ever seen it before.—A. I have.

(Paper marked "Defendants' Exhibit 396.")

Q. Do you recognize that as your brother's signature?—A. That is my signature.

Q. That, then, is signed "L"?—A. L. T. Messner.

Q. L. T. Messner?—A. Yes.

Q. I took it for an "S."—A. L. T.

Q. Do you recognize that as a facsimile of an agreement that you had with those parties named in that exhibit?—A. Yes, sir.

Q. Was that agreement carried out?—A. No.

Q. This offer was not accepted by Mr. Munn?—A. It was.

Q. Did you deliver any oil under it?—A. I did not.

Mr. CAMPBELL. I offer defendants' Exhibit 396 in evidence.

13682 Q. You were referring to a tank wagon that made a delivery of gasoline at Albany?—A. Yes, sir.

Q. When was that?—A. I can't tell you.

Q. Was it after you took charge at Troy?—A. Yes.

Q. Sometime in 1901 or 1902?—A. I can't say as to the time.

Q. It might have been 1902?—A. It might have been.

Q. How many horses were there in that tank wagon, do you remember?—A. From one to three, according to the amount of gasoline taken down there.

Q. And who went on it?—A. I did, part of the time, and part of the time one of my drivers.

Q. More than one man at a time?—A. No, not of ours.

Q. What do you mean by "not of ours?"—A. Not of the Tiona Oil Company.

Q. Did anyone else go on it?—A. Might have, yes.

Q. Do you remember who?—A. No; might have picked up someone for a ride; that is all.

Q. Just as a passenger?—A. Just as a passenger.

Q. How long a haul is it?—A. It was eight miles from our plant.

Q. And you had only this one customer?—A. That is all.

Q. How often did your tank wagon deliver there?—A. Perhaps at intervals of a month. According to the requirements of the customer.

Q. For about how long?—A. I believe that it was in the neighborhood of a year and a half.

Q. And that was the only customer you had?—A. That was the only customer.

13683 Q. Sometimes you went with the wagon, and sometimes one of your drivers?—A. One of the men; yes, sir.

Q. Was it the same kind of a tank wagon you used in delivering kerosene oil?—A. Yes.

Q. It was sometimes used for carrying kerosene oil?—A. Occasionally used for carrying kerosene oil, probably more than gasoline.

Q. Was it one of your regular tank wagons that you operated at Troy?—A. One of our regular tank wagons.

Q. And you took it off the regular beat and sent it over periodically to Albany, did you?—A. That is right.

Q. To make this single delivery to this one customer?—A. That is right.

Q. And did he take a full tank-load of oil?—A. He did.

Q. About every month or so?—A. Yes.

Q. Where is his place in Albany?—A. It is in the southern part of the city, on the main street. I can not tell you the name of the street.

Q. South Pearl street?—A. I can't say; I don't know.

Q. Do you cross State street to get to it?—A. No.

Q. Where does the Troy road enter Albany?—A. At the southern point of the city. I am wrong. At the northern point of the city. Troy is north of Albany. We came in along the street car line from Troy, on the same road.

O. Albany, as I recollect it, is situated on the side of a hill, and State street runs up and down the hill?—A. Yes, sir.

Q. Through about the centre of the town?—A. Yes, sir.

13684 Q. South Pearl street runs at right angles to State street, along the lower portion of the town?—A. Yes, sir.

Q. At the foot of the hill?—A. Yes, sir.

Q. Near the river?—A. Yes, sir.

Q. Now, which way, if you have it in your mind, are the points of the compass at Albany with reference to the way State street lies, as I have described it?—A. I should think State street almost due east and west.

Q. And Troy lies to the north of Albany?—A. Yes, sir.

Q. So that coming in from Troy you enter Albany at the north and drive down the street, along the river?—A. Very near.

Q. And then where is the store situated, at which you made these deliveries?—A. This was a shirt factory.

Q. Located on the banks of the Hudson River?—A. No; located on the main street as we enter Albany, on the right-hand side, north of Livingston avenue.

Q. They have tanks to receive this gasoline?—A. Yes, sir.

Q. Do you know where the Standard Oil Company's office is in Albany?—A. Yes.

Q. Did you drive past it on this wagon, in making these deliveries?—A. No.

Q. Not at any time that you were on the wagon?—A. Not at any time——

Q. ——that you were on the wagon?—A. ——that I was on the wagon.

Re-direct examination by Mr. MORRISON:

Q. Would it be in the direct route, or out of it, for your
13685 wagon to pass by the office of the Standard?—A. Away out.

Q. Will you explain fully how this proposition came to be made, and what was done with it, that is shown by defendants' Exhibit 396?—A. This document was executed by the writer, as an agreement entered into with the party, with the intention on my part——

Mr. CAMPBELL. I object to the intention. The document speaks for itself.

Q. Go ahead.—A. This document was executed by the writer, in agreement with the party mentioned at the head of the sheet, as a retaliation for secret agreements and rebates that were being given by the Standard Oil Company.

Q. What do you know about that?—A. I know it.

Q. Tell us how you know it.—A. I know it from the testimony of reliable, honest men, who were in business, whose reputation was worth more than a cent a gallon on oil.

Mr. CAMPBELL. I move to strike out the testimony of the witness as to facts his knowledge of which depends upon the testimony of other persons, however reliable.

Q. Go ahead and tell just how you know that any other company was making secret arrangements in Troy at the time or before the time when you made that written agreement.—A. Outside of hearsay evidence, by the fact that customers of the Tiona Oil Company would do one of two things; they would either stop buying oil of us outright or they would send for me and tell me of these prices which they stated were being made by the Standard Oil Company's men.

Mr. CAMPBELL. The same motion, and the same objection.

13686 Q. Did you visit the trade?—A. I did.

Did you find that you were losing customers?—A. I did.

Q. To what company?—To the Standard Oil Company.

Q. When you found you were losing a customer, what did you do about it?—A. I did one of two things.

Q. State just what you did do.—A. I either met the price of the Standard Oil Company and held the customer, or I retaliated by

notifying every Standard Oil customer I could get hold of what the Standard was doing to so-and-so—hearsay.

Q. When you would hear that you had lost a customer and that a rebate would be given, what was the first thing you would do? Did you make any investigations?—A. I made investigation immediately in all cases.

Q. What did you do?—A. Investigated the party; found out.

Q. When you say "investigated," tell me just what you did.—A. I went right to the customer, asked him who had been there to see him, and what they said.

Q. Was it reported to you that the Standard had offered some secret rebate or had made some secret arrangement with them?—A. Yes.

Q. How general was that at about the time this contract was made?—A. Very general.

Q. To about how many of your customers did you learn that such overtures had been made?—A. At this time?

Q. At about this time, yes.—A. In the neighborhood of twenty or so.

Q. All about the same time?—A. At about the same time.

13687 Q. And did you lose those customers?—A. In some cases, yes.

Q. And that, as I understand you, caused you to go among your trade and investigate it?—A. Yes, sir.

Q. And what do you say you learned on that investigation?—A. That the Standard Oil man, one man or another working for the Standard Oil Company, had been there and had made them a certain proposition which they retailed to me.

Q. Was that a proposition which involved a rebate or a refund or a cut?—A. Yes.

Q. In what way was it generally carried out?

Mr. CAMPBELL. I object to that, as not within the knowledge of the witness——

WITNESS. It is within the knowledge of the witness.

Mr. CAMPBELL. ——and calling for the conclusion of the witness.

Q. Go ahead.—A. By a return, at the end of each month, of half a cent a gallon to a cent and a half a gallon for every gallon of oil purchased from the Standard Oil Company.

Q. How did you learn that?—A. I saw the checks come from the Standard Oil Company.

Q. Did you learn it in any other way?—A. Only by the testimony of the grocer or druggist.

Q. By what the dealer told you?—A. By what the dealer told me.

Q. On occasions when you went there to ascertain what the facts were?—A. Yes, sir.

Q. Was it a part of your business to keep track of these trade conditions and the prices that prevailed, and the arrangements that were made with reference to prices?—A. It was.

Q. And was it while you were in the line of that duty that
13688 you ascertained that these arrangements had been made by the Standard?—A. Yes.

Q. Now, you said a little while ago that there were two ways you had of meeting that situation.

Mr. CAMPBELL. Are you going into another line now?

Mr. MORRISON. No; I am on the same line.

Mr. CAMPBELL. I will repeat again my objection to this testimony, upon the ground that it appears on the face of the evidence that it is hearsay, and move to strike out the foregoing testimony of this witness, upon that subject, based upon information and statements made to him by the trade or by others.

Q. You said that you did one of two things when you learned that these arrangements had been made with the trade. Now, state just what you did do?—A. I talked with a customer, and, in case I could get him to remain with us at the market price, well and good; if I could not, I would meet the price made by the Standard Oil Company. If I couldn't do anything with that man, I went to one of their customers in retaliation, and made him a price. If that did not avail, I went to all the Standard Oil trade and told them what they were doing in a certain location with a certain man, asking them if their money was not as good as Mr. Smith's, for instance.

Q. Did you have occasion to go to the trade more than once and tell them that the Standard was making certain secret arrangements or cut prices with certain customers?—A. Yes, sir.

Q. How often did you do that, and covering what period of time?—A. Many, many times; all the time I was in Troy.

13689 Q. Did you ever do that except where you became satisfied that the Standard had made a secret cut?—A. Never.

Q. While the Standard was making these secret cuts that you have told about, did it maintain openly its regular market price?—A. Yes, sir.

Q. Were those cuts made by the Standard to all of its customers, or to certain customers that it singled out?—A. To our customers.

Q. They were made to your customers?—A. Yes.

Q. And after you had gone to your customer to see what you could do, as I understand you, you then went to their customers?—A. Yes, sir.

Q. And did you make offers to cut the price to their customers?—A. An equal offer with the one I met from my customer.

Q. Did you ever cut below the offer that was made to your customer?—A. Never.

Q. And when you say that you did this as a retaliatory measure, what do you mean?—A. I mean that I had to keep up my gallonage, and that when a man was taken away from me who bought a hundred gallons a week, I got another one.

Q. And you would go to a Standard Oil customer and give him that same price?—A. Yes; and tell him why.

Q. Did you in all cases tell him the reason why you made him that offer?—A. Always.

Q. Did you give him the name of the person that you understood was getting favors?—A. Yes.

Q. Did you make any arrangements of that kind with Standard Oil customers?—A. No.

13690 Q. About how many did you make, all together?—A. I can't say.

Q. You haven't any idea about that?—A. I haven't any idea.

Q. Did that continue during the entire period that you were at Troy?—A. It did.

Q. Now, as to this particular case of Mr. Munn's, was he a Standard Oil customer?—A. He was.

Q. Did you go and have a talk with him?—A. I did.

Q. What did you tell him?—A. I told him that I would do this for him because my customer was getting the same done for him by the Standard Oil Company.

Q. Did you tell him what customer it was?—A. I did.

Q. Do you remember now who it was?—A. I do.

Q. Who was it?—A. Wilfred Palin, of Cohoes.

Q. This (defendants' Exhibit 396) is all in your handwriting, isn't it?—A. All.

Q. You wrote it right there in the store of Mr. Munn, did you not?—A. Yes, sir.

Q. And did Mr. Munn agree to this arrangement?—A. He did.

Q. What took place there? You say that it was not carried out, I think—A. It was repudiated by the Tiona Oil Company at Binghamton, I not having sufficient authority to do such a thing.

Q. Did you deliver any oil?—A. Never; never delivered any where he got the benefit of the price. It was repudiated the next day.

Q. Did you report this to your superior?—A. At once.

Q. And he repudiated it?—A. He did.

Q. Did you go back and see Munn after that?—A. I did.

13691 Q. Did you explain that situation to him?—A. I tried to.

Q. Were you able to sell him oil after that?—A. I was.

Q. At what price?—A. At the regular price.

Q. He took oil of you then at the regular price?—A. He did.

Q. Do you know whether he had in the meantime investigated to see whether you were correct in your statement to him when you told him that the Standard was making a cut to this man in Cohoes?—A. I don't know.

Q. Did you make any other arrangements of this kind, in writing?—A. I think I did.

Q. Were they carried out?—A. No.

Q. You don't think any of them were carried out?—A. No, they were not.

Q. Did you make any verbal arrangements which were carried out, to the same effect as this is in writing?—A. Yes.

Q. You did do that?—A. I did.

Q. And where you got a Standard customer under the circumstances that you have explained, you actually did make the same price to him that the Standard had made to some of your customers, and actually carried it out?—A. I did.

Q. How frequent an occurrence was it that it would be reported to you that the Standard was making some secret cut among your customers?

Mr. CRAWFORD. I think he has been all over that.

A. There was never a week passed by to my knowledge.

Q. Was there ever a case reported to you that you did not investigate?—A. Yes.

13692 Q. About what percentage of the cases did you not investigate?—A. Very few. In the case of a man that I didn't think was a party to be believed, that I thought was trying, perhaps, to do something for himself without having been approached.

Q. You investigated all except these few that you thought were not perhaps genuine reports?—A. Yes. Sometimes I was not in position to make a price; oil was high.

Q. Then you did not take the mere say-so of your tank-wagon driver as to whether a cut had been made by the Standard or not, did you?—A. No, never.

Q. Were all of these secret arrangements that were made there, and about which you have been testifying, made by the Standard Oil Company, or were some of them made by the Troy Oil Works?—A. They were all made by the Standard Oil Company.

Mr. CAMPBELL. I object to the question, on the ground that it assumes that the Standard Oil Company had been making such special prices, of which there is no competent evidence.

Q. Did you make any arrangements of the kind indicated in defendants' Exhibit 396, either in writing or verbally, in any case except where you were satisfied, from an investigation made personally by yourself, that the Standard had made a similar arrangement with some of your customers?—A. Never.

Mr. CAMPBELL. I object to that question as leading.

Q. You spoke of W. F. Messner—in reference to his traveling on the road. Let me see if I understand you. Up until the time that W. F. Messner became superintendent of the Cornplanter Refining Company he was occasionally on the road?—A. Yes.

13693 Mr. CAMPBELL. I would like to renew my objection to the testimony of this witness on the subject of prices, both market prices and special prices at Troy, upon the ground that the same is not proper rebuttal. And I should also like to renew my motion to strike out the testimony of this witness as to what he learned from his customers on the subject of prices made by the Standard Oil Company, as hearsay.

Recross-examination by Mr. CAMPBELL:

Q. Did you report all contracts of the nature of the one set forth in defendants' Exhibit 396 to the office at Binghamton?—A. I did.

Q. And were they all canceled by the order of that office?—A. Yes, sir.

Q. In other words, you were never permitted to carry out such an agreement?—A. On kerosene oil, no.

Q. On kerosene oil—when reported by you to your office?—A. No, sir.

Q. But I understand that there were various verbal arrangements that you made that you did carry out?—A. Yes, sir.

Q. Had those verbal arrangements been reported to your office at Binghamton, would you have been permitted to carry them out?—A. They were previously sanctioned by the office, and I was told to do what I did. In this case, not.

Q. What distinction did the Binghamton office make between a written and a verbal contract?—A. That I was not high enough up to make a written agreement. That I was not high enough up to make a verbal contract, unless I had authority to do so.

13694 Q. Then I understand you were not authorized in advance to make this agreement with R. W. Munn (referring to defendants' Exhibit 396)?—A. This one?

Q. Yes.—A. No.

Q. And it was for that reason that the agreement was canceled?—A. I presume so. I don't know. I presume that is right.

Mr. MORRISON. There is one question I forgot to ask, and I would like to ask it now.

By Mr. MORRISON:

Q. Did you participate with your brothers in the arrangements that were being made to go to Troy and start the Tiona Oil Company?—A. To a small extent, yes.

Q. And did you ascertain the prices that were prevailing at Troy at about the time you went there?—A. Yes, sir.

By Mr. CAMPBELL:

Q. How far is the Standard Oil office in Albany from State street?—A. Which way from State street?

Q. North.—A. It is one block; over to South Pearl.

Q. And a person standing at the window of the Standard Oil office on South Pearl street would command a view of a certain portion of State street, would he not?—A. I should say very little, except straight in front, because the building is not more than flush.

Q. Do you say that a person standing in the Standard Oil building would not be able to see a tank wagon driven up State street?—A. Oh, he could see a tank wagon go by the corner of South Pearl and State—yes, might be able to.

13695 GEORGE J. R. WOLFF, a witness called in behalf of petitioners, in rebuttal, having been duly sworn, testified as follows:

Direct examination by Mr. MORRISON:

Q. What is your name?—A. George J. R. Wolff.

Q. Where do you live?—A. 942 North Broadway, Baltimore.

Q. What is your occupation?—A. I am in the oil business.

Q. With what company are you connected?—A. The Crew-Levick Company.

Q. What business is the Crew-Levick Company doing in Baltimore?—A. They are selling refined oil.

Q. Where?—A. In Baltimore.

Q. Anywhere else?—A. Yes, sir.

Q. What is their territory?—A. Pretty much throughout the United States and Europe.

Q. How long have you been connected with the Crew-Levick Company?—A. Since January, 1902.

Q. What did you do when you first went into the employment?—A. Driving a tank wagon.

Q. How long did you drive the tank wagon?—A. Until April 25, 1904.

Q. On the streets of Baltimore all the time?—A. Yes, sir.

Q. Were you delivering to dealers?—A. I was.

Q. You had nothing to do with the consuming trade—the retail trade, the consumer?—A. With the consumer; no.

Mr. CRAWFORD. How is that now?

WITNESS. The retailer I had nothing to do with; that is, the direct consumer. I was selling to the storekeeper.

Q. You were appointed manager, I think you said, in 13696 1904?—A. Yes, sir.

Q. And you have been in that position ever since?—A. Yes, sir.

Q. How closely do you come in touch with the trade there in Baltimore?—A. Every day.

Q. To what extent do you see the purchasers and the dealers with whom you trade and with whom the other oil companies there trade?—A. Personal interviews nearly every day with some of them, more or less, see them all.

Q. Who was the manager of Crew-Levick before you became manager?—A. William G. Davidson.

Q. How long had he been manager?—A. He was manager about three years.

Q. When you speak of "manager," you mean, do you, the manager of the Baltimore station?—A. Yes, sir.

Q. Not the manager of the company?—A. No, sir.

Q. And you have to do directly with the marketing of the product?—A. Yes, sir.

Q. And nothing else?—A. No, sir.

Q. Mr. Bruce Robinson was called as a witness on behalf of the defendants. Do you know him?—A. Yes, sir.

Q. How long have you known him?—A. I judge I have known Mr. Bruce Robinson in Baltimore about fifteen years. He was formerly in the flour business—selling flour.

Q. While he was on the witness stand his attention was called to petitioner's Exhibit 635, which showed a general decline in the price

of oil in 1904 from 10 cents in March to 7 cents in September, and he was asked to explain the reason of that decline. He stated
13697 that the price declined on account of the cutting of prices by the Crew-Levick Company, which lowered the market half a cent a gallon at a time. Do you know what the conditions were in Baltimore at that time?—A. Yes, sir.

Q. What did cause the reduction of prices on that occasion?—A. The Eagle Oil Company, which was then in Baltimore, and of which Mr. Blaustein claimed to be the owner, began a war against the Crew-Levick Company, cutting the price, first half a cent, to our trade. The only way I could hold the trade was by following down the same price. After I followed down half a cent, he went down half a cent further; from there he went still on further——

Mr. CRAWFORD. I object to this, unless the witness knows, and shows how he knows, that the Eagle made this cut. I object to the answer, and move to strike out so much of it as relates to the Eagle Oil Company, because it is obviously based not upon knowledge, but upon hearsay.

Q. Go on and finish your answer.—A. The price gradually that way declined, until we were down to 7 cents. The Eagle Oil Company then was selling at 6, and Mr. Blaustein went out openly on the street and dared me to come down to 6, and he would go down to 5. When that message came out I knew that it was a losing game for the Crew-Levick Company, and that they couldn't stand it—it was only a matter of time and we were compelled to give up—so I got to studying and I studied out a little plan.

Q. I don't care to come to that now. Who made these cuts in Baltimore—the Eagle Oil Company or Crew-Levick Company?—A. The Eagle Oil Company.

Q. And you followed them down to what point?—A. Down to 7 cents.

Q. While you were selling still at seven, how low did the
13698 Eagle go?—A. Six.

Q. Who is Blaustein?—A. There is the gentleman, sitting there [indicating].

Q. What business has he been in, to your knowledge?—A. In the oil business, in the flour business, and broom manufacturing, and different other things.

Q. Did he represent the Eagle Oil Company to be an independent concern?—A. He did.

Mr. CRAWFORD. I object. To whom did he represent it?

Mr. MORRISON. Suppose you wait until your cross-examination.

WITNESS. To me.

Q. Do you know whether he represented it to the trade in general?—A. Yes, sir.

Q. Was that subject a matter of discussion there, as to whether the Eagle was an independent company or not?—A. Some of the store-

keepers it was hard to make believe that he was not; others again were——

Q. The question is, whether that was a matter of discussion?—A. Yes, sir.

Q. And I assume that where there was a discussion, some of the people took one side, and some the other?—A. Yes, sir.

Q. During the time that the Eagle was cutting there, what was the Standard Oil Company doing?—A. The Standard Oil Company continued at 8 and 9.

Q. During the entire time?—A. Yes, sir.

Q. So that during that time the Standard Oil Company was selling at 8 or 9 cents a gallon; your company was selling at 7 cents a gallon?—A. The Standard Oil Company was selling oil at 8,

13699 gasoline at 9.

Q. What was your company selling it at?—A. Seven and eight; gasoline, 8.

Q. And what was the Eagle Company selling at?—A. Oil 6, gasoline 7.

Q. How long did those prices prevail before there was a change?—A. I think it was somewhere around October.

Q. When did it commence?—A. Started in the early part of May.

Q. And was it practically continuous until October?—A. Yes, sir.

Q. Then what, if anything, did you do to remedy the conditions there?—A. I went to my customers, stated the case to them, told them it was impossible for us to go down any further, that we were losing money then, and that it was only a matter of time that we had to step down and out altogether. I asked them to continue buying from us, although Mr. Blaustein was offering goods to them at a cent less than we were selling goods at that time; that later on, when the price advanced and the fight was over, for the same period of time this fight would last I would allow them the equal reduction that they could get then from Mr. Blaustein during the time that this fight was going on. The customers took up the proposition, and Mr. Blaustein was not able to get any more trade away from the Crew-Levick Company. That ended the fight.

Q. Did the price go up then?—A. Yes, sir.

Q. To what point?—A. It went up to 8½ cents.

Q. During the time that you have spoken of, to what trade did Blaustein go, and whose customers did he solicit?—A. My customers; the Crew-Levick Company's.

13700 Q. Did he solicit the Standard Oil Company's customers?—A. No, sir.

Q. How do you know that?—A. I have never seen him take a Standard Oil customer away.

Q. Were you right there?—A. Yes, sir.

Q. Keeping track of the situation?—A. Yes, sir.

Q. So that you know, do you, that he confined himself to your customers?—A. Yes, sir.

Q. Do you know where he got his oil?—A. Yes; in Union tank cars, at Wells and Clarkson streets, South Baltimore.

Q. Did you know the Dixie Oil Company?—A. I knew the Dixie Oil Company in Baltimore. Later on Mr. Blaustein said he had lost all of his money in the oil business and was a poor man and had to get out.

Mr. CRAWFORD. Had what?

WITNESS. He was a rich man one time and he lost all his money in the oil business, and he had to sell out to the Dixie Oil Company. That is when the Dixie appeared.

Q. The Dixie was not operating then in Baltimore, at the time you have just been testifying about?—A. No, sir.

Q. Do you know whether or not Blaustein visited all of your customers?—A. Yes, sir.

Q. How do you know that?—A. Seeing him in stores myself, and from what storekeepers told me—that he had been there.

Mr. CRAWFORD. I move to strike out everything that the storekeepers told him, and all evidence based upon that, as hearsay.

13701 Q. Can you give us the names of some of these people?

Mr. CRAWFORD. I object to that as incompetent, calling for hearsay, and in no wise obviating the objection.

A. There are so many that I really don't know where to start. We can start with Rasch & Company, Reisenweber, Zink.

Q. Henry Kraft?—A. "Kraft" is Rasch. Sause.

Q. Do you remember a man by the name of Littlebush?—A. Littlebush.

Q. Hammer?—A. Yes, Hammer.

Q. I don't care for a full list.—A. Well, the fact is, all of them.

Q. Did Blaustein make a 6 cent price to some of these people?—A. Yes, sir.

Mr. CRAWFORD. I move to strike that out, as based on hearsay and not within the knowledge of the witness.

Q. Did you at any time make a cut below the Eagle's price?—A. No, sir.

Q. Did you at any time initiate a cut?—A. I did not.

Q. Mr. Robinson, in answer to a question that was put to him, said that you made certain prices to a certain portion of the trade, but that your tickets all showed the open market price. What have you to say about that?—A. During the year 1904 we marked the tickets exactly as we sold the goods.

Q. Were there any exceptions to that?—A. In 1905, the beginning of 1905, in fact all through 1905, where there was anything in that line done, there was a ticket made out exactly as the regular standard price was.

Mr. CRAWFORD. What do you mean by that?

13702 WITNESS. If the goods were sold at 7½, and the market price was 8, the ticket was marked 8 cents.

Q. You made your ticket in 1905 according to the regular open market price?—A. Yes, sir.

Q. In 1905 did Blaustein again commence to cut the price?—A. Yes, sir.

Q. Before going into that, let me ask you a little more about 1904. Was Blaustein cutting in 1904?—A. Yes, sir.

Q. How did you meet that cut in 1904?—A. In 1904 was the open cut, where we went down to 7 cents and Mr. Blaustein to 6.

Q. All of your cuts in 1904, as I understand you, were open cuts?—A. Yes, sir.

Q. And were they cuts made to your entire trade?—A. Yes, sir.

Q. Not a special arrangement made with any particular customer?—A. No, sir.

Q. Now, you said that some time toward the end of 1904 the prices went up?—A. Yes, sir; in the latter part of 1904.

Q. How high did they get in 1904?—A. To 9 cents.

Q. And were all of the companies selling at the same price?—A. Yes, sir.

Q. That is, the Eagle, the Standard, and yours?—A. Yes, sir.

Q. Did any change take place in 1905?—A. In 1905 Mr. Blaustein began cutting again.

Q. About what time in the year?—A. In the early part of the season. In the spring.

Q. Whose customers did he visit?—A. Crew-Levick's.

Q. How did he make his cuts, by lowering his general prices or by making secret arrangements with certain customers?—
13703 A. Secret arrangements.

Q. Was his open price the same as yours?—A. Yes, sir.

Q. In what way did he cut the price?—A. By offering the goods at half a cent less and marking the ticket at the full price.

Mr. CRAWFORD. I object to that and move to strike it out, on the ground that it is obviously not within the knowledge of the witness and must be based upon hearsay.

Q. How did you know this?—A. From the drivers that were working for Mr. Blaustein at the time, and as well from the customers.

Mr. CRAWFORD. I renew my motion, since it appears from the witness' answer that the entire knowledge of the witness is based upon hearsay.

Q. Did you make any investigation, as a part of your business in conducting the affairs of that company at that time, to see what prices and secret arangements Blaustein was making to certain of your customers?—A. Oh, yes, sir; I was constantly doing that.

Q. Was that a part of your business?—A. Yes, sir.

Q. To get at those conditions?—A. Yes, sir.

Q. Do you know whether or not Blaustein made these secret arrangements with his customers or with the Standard Oil Company's customers?—A. He didn't make any with them, he only made it with ours.

Mr. CRAWFORD. I object to that on the same ground—that it is obvious that the witness can not know what he is testifying about; he must be speaking from hearsay or surmise.

Q. How generally did he make these arrangements with your customers?—A. He would go into a store and offer the goods for
13704 less money, and the customer would leave us then and start to buy from Mr. Blaustein.

Mr. CRAWFORD. I wish to renew my motion to strike this out as hearsay.

Q. When you learned that a customer had gone over to the Eagle, what did you do?—A. I went to see the customer, and asked him why he had left us, and he stated that he was getting a better price; that if I could give him the same price he would rather deal with us.

Q. What did you do about those situations, in 1905?—A. In 1905, mostly, I met the price, but I started out, after that, into the suburbs and notified people in the suburbs what the Eagle Oil Company was doing in Baltimore city and got them to buy from us, and in two instances I had to give them an inducement to come to us, to cut the Eagle Oil Company out there.

Q. What were these two instances? Who were the people?—A. Mr. Alt and Mr. Ketcham.

Q. To those two customers you had to make some concession on the price?—A. Yes, sir.

Q. How much of a concession did you make?—A. Half a cent.

Q. Half a cent to Alt?—A. Yes, sir.

Q. And half a cent to Ketcham?—A. Yes, sir.

Q. Aside from those two persons, did you make any cut from your regular price?—A. I made one more—to a man by the name of Gross, on Columbia avenue.

Q. Were there any others?—A. No, sir.

Q. Had these persons been Standard Oil customers before that?—A. Yes, sir.

13705 Q. How generally did you go to the Standard Oil customers and tell them what Blaustein was doing?—A. I told them what Blaustein was doing—that he was running after our trade, taking it away from us right and left, by giving them an inducement, and "all you have got to do is to turn your business over to us and you are bound to get the same."

Q. Did you tell the Standard Oil customers what customers of yours Blaustein had made secret arrangements with?—A. Oh, yes; I mentioned some.

Q. So that they could look them up if they wanted to?—A. Yes, sir.

Q. Did you have anything to satisfy them that what you said was true, aside from your own word?—A. Oh, yes, sir; I proved it to them.

Q. In what way?—A. I went in 1905 to the Standard Oil Company's customers and made them a proposition. It seemed to be very hard to move a Standard Oil customer away from the Standard Oil Company by making them believe that the Eagle Oil Company was really a part of the Standard Oil Company. So I made this proposition to them: I said, "Gentlemen, turn your business over

to us. The first week's supply of oil we don't ask you to pay for if Blaustein does not come here within thirty days offering you a better price. If, however, he does come, I expect you to pay for this one week's supply of oil. If he does not come, then I will give you the goods at half a cent less than the market price, and one week's supply of oil is a surety that I will be faithful to my word." The customers accepted the proposition that I made; and in all instances in
13706 less than fourteen days Mr. Blaustein was there. I also asked them at the same time that when Mr. Blaustein did come, to inform me at all times what price he was offering, and I would keep them advised whether to accept this price or not. And Mr. Blaustein came, offering half a cent. I said, "Don't accept it; you can do better." He came down to three-quarters. I told the customers to accept. Later on I went around again and said, "I am going to send my wagon to-morrow morning to fill up; tell Blaustein you are getting it from me half a cent better."

Mr. CRAWFORD. Tell Blaustein what?

WITNESS. To tell Blaustein he was getting it from me half a cent better.

Mr. CRAWFORD. The customer?

WITNESS. The customer. And Mr. Blaustein came back and had to go still better than half a cent, and Mr. Blaustein went better than half a cent, and he got the trade. That went to two cents below the market price.

Q. Did he keep down all the while below your price?—A. Oh, yes, sir.

Q. And did he retain those customers?—A. Until he turned over to the Dixie Oil Company and said he had lost all of his money in the oil business and was a poor man now, and that the Dixie Oil Company wouldn't allow him to give it any longer; and then they told him "If you can't give us for what we have been getting and the promises you have made to us, we are going back to Crew-Levick."

Q. Did some of those customers finally come back to your
13707 company?—A. All came back to the Crew-Levick Company.

Q. How long was that going on?—A. That was up to the latter part of 1905.

Q. Commencing when?—A. About July, I think it was, somewhere around July, when we started.

Q. And during all this time was Blaustein, or the Eagle Oil Company, which he was operating, cutting the price secretly to your customers?—A. Yes, sir.

Q. Did you tell the Standard's customers what Blaustein was doing?—A. Oh, yes.

Q. Did you tell them the reasons that you had for making them these offers of secret arrangements?—A. That was my original own trade, Mr. Morrison. I didn't do that to the Standard trade.

Q. That was your own trade?—A. That was my own trade, that I made the secret arrangement of paying back later on. That was in 1904.

Q. Well, I called it a "secret arrangement"—you went to the Standard Oil Company's customers and got them to buy of you at a certain price?—A. Yes, sir.

Q. A week's supply?—A. Yes, sir.

Q. And you have told us all about that?—A. Yes, sir.

Q. That applied to the Standard's customers only?—A. Only.

Q. And your own customers, in order to meet Mr. Blaustein's cuts, you made arrangements with some of them?—A. No, sir; I met the price that Mr. Blaustein was offering; I didn't make any secret arrangement at all in 1905.

Q. These three persons that you spoke of, that was in 1904?—A. Yes.

13708 Q. You made no secret arrangements, then, with any of your customers in 1905?—A. Pardon me—that was in 1905, those three.

Q. That was what I thought.—A. Those three were in 1905.

Q. Those were the only three that you had any secret arrangements with at any time; is that right?

Mr. CRAWFORD. He has not said so.

A. There was no secret arrangement there; that was meeting Mr. Blaustein, there.

Q. Yes, but that was not your regular price, was it——A. No, it was not the regular price.

Q. ——that you made to all of your trade?—A. No, sir.

Q. Now, let's see if I do understand you. Were those the only three cases, in either 1904 or 1905, when you made any cut to any of your customers which you did not make to all of them?—A. No, sir.

Q. Those are the only three, are they?—A. Yes, sir.

Q. Now, have you told us all of the methods that you adopted to meet Mr. Blaustein's company in 1904 and 1905?—A. I think that is about all.

Q. Mr. Bruce Robinson in his testimony says that you cut below the market price to certain customers, and gives the names of them. I want to ask you about them. He says you made a cut to a man by the name of Thomas.—A. No, sir.

Q. Do you know Thomas?—A. Yes, sir.

Q. What is his business?—A. Selling groceries and provisions; not provisions, just straight groceries, oil, and gasoline.

Q. Did you make any cut to him at any time below your regular market price?—A. No. Mr. Blaustein did.

13709 Q. When did Blaustein make the cut to Thomas?—A. In 1904, and 1905 also.

Q. How much of a cut?—A. Mr. Thomas would never tell me how much.

Mr. CRAWFORD. I object to that as calling for hearsay.

Q. Did Blaustein get any of his trade?—A. He has got his trade.

Q. How did he get it?—A. By making a cut.

Q. How did you learn that?—A. We had an iron gasoline tank on his pavement in front of the house, and his storage tanks nearly all

belonged to the Crew-Levick Company, and when Mr. Blaustein went there we sold him this tank. He came to me one day and says, "Mr. Wolff, I would like to be independent, and I would like to own the storage capacity that I have here, tanks, etc. I would like to buy this drum, but I don't care about paying such an exhorbitant price for it." I said "I will see what I can do for you." I stated the case to the firm and asked them whether they could not make a reduced price on that tank. So I sold him the tank very reasonable. About a week after that Mr. Blaustein went down and put a brand new spigot into the tank, a sort of lock spigot, so that he could lock the tank on the outside, and he also told me that he was doing better—that Mr. Blaustein was giving him a better price, and he turned his business over to Mr. Blaustein.

Q. Did you lose the business?—A. Yes, sir.

Mr. CRAWFORD. I want my objection to go in ahead of this question and answer. I move to strike out the answer of the witness on the ground that it is obviously based on hearsay and
13710 not on personal knowledge.

Q. You learned that while you were in touch with the trade there?—A. Yes, sir.

Mr. CRAWFORD. I object to the question as immaterial and in nowise obviating the objection that it is hearsay, and as calling for hearsay evidence.

Q. It was a part of your business to learn what competitors were selling their oil to your customers for, was it?

Mr. CRAWFORD. The same objection.

A. It was.

Q. And you had had this customer, Thomas, before, had you?—A. Yes, sir.

Q. After he told you what had occurred between him and Blaustien, you lost this customer, did you?—A. I did.

Mr. CRAWFORD. I object to the question as involving testimony which is based upon hearsay.

Q. And Mr. Blaustein got him?—A. He did.

Q. How long did he keep him?—A. The Standard Oil Company has got him still.

Q. Mr. Robinson says that you made a cut to a man by the name of Martin Rhode.—A. I did not.

Q. Do you know Martin Rhode?—A. I do.

Q. Was he one of your customers?—A. He was.

Q. Have you got him yet?—A. Partly.

Q. Was he all the while your customer in part and the Standard's in part?—A. Yes, sir.

Q. Was there any time that you had him exclusively?—A. No. I had one store exclusively.

13711 Q. Did you ever make a cut to him below the regular market price?—A. No, sir.

Q. On any commodity that you were selling for your company?—A. No, sir.

Q. Did you ever have any private arrangements or understanding with him by which he got any advantage over the rest of your trade?—A. No, sir.

Q. Mr. Robinson names also Thomas Shields as one of the persons to whom you made a special rate and a cut. Is that so?—A. No, sir. I took it away from the Standard. Mr. Blaustein took it away from me, and when Mr. Blaustein stopped he came back to me again.

Q. When did you take him from the Standard?—A. In 1904.

Q. Did you cut the price to get him?—A. No, sir.

Q. How did you get him?—A. Told him what the Standard Oil Company was doing and what the Eagle Oil Company was doing.

Q. Did you tell him and the rest of the trade that the Eagle Oil Company was run, owned, and controlled by the Standard?—A. Yes, sir.

Q. And that Blaustein was a mere tool?—A. Yes, sir.

Q. After explaining that to Shields you got his trade. How long did you keep it?—A. I guess I had it about two or three months.

Q. Then what became of it?—A. Mr. Blaustein took it.

Q. Do you know whether or not Blaustein made a cut below the market to get it?—A. Mr. Shields said he got one cent off.

Mr. CRAWFORD. I move to strike that out as hearsay.

Q. How did you happen to talk with Shields about it?—A. I asked him why he was not buying any more goods from me.

13712 Q. And he gave you that as a reason?—A. As a reason.

Mr. CRAWFORD. The same motion.

Q. Did he say anything about your making a cut to him, or whether he would stay with you if you made a price as low as Blaustein?—A. No.

Q. He said nothing about that?—A. I told him I couldn't do anything like that.

Q. And Blaustein kept it?—A. Yes, sir.

Q. Did you ever sell him any oil after that?—A. Yes, sir.

Q. When?—A. When Mr. Blaustein stopped giving him the rebate, he came back to me.

Mr. CRAWFORD. I move to strike out the former part of the answer on the ground that it is based on hearsay and not upon personal knowledge.

Q. When was that?—A. I think that was somewhere around August, 1904.

Q. Bruce Robinson says that you also made a cut to T. F. Bowen. Do you know Mr. Bowen?—A. Yes, sir.

Q. Who is he?—A. A storekeeper.

Q. Did you ever sell him oil?—A. Yes, sir.

Q. When?—A. During 1904 and 1905.

Q. Whose customer had he been before that?—A. The Standard Oil Company's.

Q. Did you make any cut to Bowen or any secret arrangement of any kind?—A. No, sir.

Q. What price did he pay you for the oil?—A. He paid me the regular market price at the time.

Q. Did he pay you the same price that all your trade was paying?—A. Yes, sir.

13713 Q. Did he get any drawback or rebate or concession of any kind or character from you?—A. He did not.

Q. Or anything that all your other customers did not get?—A. He did not.

Q. Is Bowen with you yet?—A. I would have to refer to the books. I couldn't say.

Q. Did Blaustein have him at any time?—A. I don't think he ever did.

Q. Mr. Robinson says that you made a cut to H. B. Whaley. Do you know Whaley?—A. Yes, sir.

Q. He is a dealer there, isn't he?—A. Yes, sir.

Q. Did you make any cut of any kind to him?—A. I did not.

Q. Either open or secret?—A. No.

Q. What was your price?—A. The regular open price.

Mr. CRAWFORD. What was the Standard's price?

WITNESS. The regular market price.

Mr. CRAWFORD. Was not your price to him less than the Standard's?

WITNESS. No, sir.

Q. Had he been dealing with the Standard before that?—A. I think he had.

Q. How did you get his trade?—A. I don't think that I got it myself, Mr. Morrison.

Q. Mr. Robinson says you made a cut to a man by the name of Danzeglock. Do you know him?—A. Yes, sir.

Q. Did you make any cut to him, open or secret, or in any way?—A. No, sir.

Q. What did he pay you for oil?—A. The same prices as all the rest.

Q. Was that the same price that the Standard was selling for at that time?—A. Yes, sir.

Q. Had he been a customer of the Standard?—A. Yes, sir.

Q. How did you get his trade?—A. By asking him to give us some of his business. He gave us one store and part of the other.

Q. Did you finally get all of his trade?—A. No, sir; never did.

Q. Never had it all?—A. Never.

Q. Who had the rest?—A. The Standard Oil Company.

13714 Q. Well, have you kept up about that same proportion?—A. That is still about the same; selling to the Pennsylvania avenue store and to one on Biddle street.

Q. How many stores has he?—A. Two.

Q. And you sell him more than the Standard sells?—A. No; I guess it is about equally divided.

Q. And your price is the same?—A. Yes.

Q. And has been, has it, ever since you have been selling him?—A. Yes, sir.

Q. He says also that a cut was made to a man by the name of S. Lowenthal?—A. No, sir.

Q. Do you know him?—A. Yes, sir.

Q. Was he formerly a Standard customer?—A. He was.

Q. How did you get his trade?—A. I got his trade through being a customer of a brother-in-law of his who was a tailor.

Mr. CAMPBELL. Is this Mr. Lowenthal?

Mr. MORRISON. Lowenthal.

Q. And did you charge him the prevailing price?—A. Yes, sir.

Q. And did he pay that price?—A. Yes, sir.

Q. Robinson says that you made a cut to a man by the name of C. Schroeder. Do you remember Schroeder?—A. I know Schroeder; yes, sir.

Q. Did you make any cut to him?—A. No, sir.

Q. Had he formerly been a Standard customer?—A. Yes, sir.

Q. How did you get him?—A. I think the driver got him.

Q. You don't remember about that?—A. I didn't get him myself.

Q. Did you make any cut to him?—A. No, sir.

13715 Q. Did he pay the prevailing market price for all the oil he got?—A. Yes, sir.

Q. Was any cut made to him by the driver or anybody else?—A. No, sir; the driver had no authority to do so.

Q. Do you know a man by the name of D. E. Kontz?—A. Kontz?

Q. Yes. I don't know how you pronounce it.—A. I can not recall it.

Q. Did you make any cut to him?—A. No.

Q. How do you know?—A. If I did I would know it.

Q. Do you know Mrs. Grim?—A. No, sir.

Q. Don't remember her? Did you make any cut?—A. I did not.

Q. William Peil; do you know that person?—A. No, sir.

Q. Don't know him?—A. I can not just now recall him. The name is not familiar to me.

Q. How is that?—A. The name is not familiar to me just now.

Q. Do you know The Consumers Meat Company?—A. Yes, sir.

Q. Did you sell them any oil?—A. I sold them some; yes, sir.

Q. When did you commence selling them?—A. Oh, we had been selling them for some time. The driver got the trade; he got a portion of the business.

Q. Did you ever have all of their business?—A. No, sir.

Q. Who has the rest of it?—A. The Standard Oil Company.

Q. Did you make any cut to this company in any way?—A. No, sir.

Q. Did they pay the full market price for all the oil they got of your company?—A. They did.

Q. Do you know a man by the name of R. D. Bateman?—A. Yes, sir.

Q. Well, Bruce Robinson says you made a cut to him. Is

13716 that true?—A. I did not.

Q. Was he your customer?—A. Yes, sir.

Q. How long have you had him?—A. Bateman has been buying from the Crew-Levick Company, I guess, somewhere around eight years.

Q. Did he buy of any other company at the same time?—A. The Standard Oil Company.

Q. Is your business pretty nearly evenly divided with the Standard?—A. Pretty much the same.

Q. Did you ever give him a cut price?—A. No, sir.

Q. Did he ever get any oil from your company that he did not pay the full market price for?—A. No, sir.

Q. Now, I want to ask you about a man by the name of Mr. B. Russell. Mr. Robinson says that you made a cut to him. Will you go on and explain your business relations with Mr. Russell?—A. Mr. Russell had two stores—one on Orchard street and the other one on Division. I took the store on Division street away from the Standard Oil Company, and Mr. Blaustein immediately took him away from me by giving him a half a cent.

Mr. CRAWFORD. How do you know that?

WITNESS. The customer told me.

Mr. CRAWFORD. I object to it and move to strike it out on the ground that it is obviously hearsay on the witness' own testimony.

Q. Go right on.—A. Mr. Russell himself, on Orchard street, then told the clerk in the Division street store to send the Eagle Oil Company wagon down to see him; but the wagon didn't come.

13717 He then hailed the Eagle wagon on the street himself and asked them to stop down to supply him. He said he hadn't time just then, but he would as soon as he would get around the block. He didn't come. He sent for Mr. Blaustein. Mr. Blaustein didn't come. He then sent for me. I went down to see him and he asked me if I could give him the oil at a reduced price. I told him I could not. But I says, "Why don't you do the same as the other store did—let my wagon fill you up to-morrow and you will get it." "Well," he says, "Blaustein won't come near me." I says, "He will after you buy from us." He says, "All right; send your wagon." I sent the wagon the next day, and the day after Mr. Blaustein was there and put in the goods and got his business.

Q. Has he had it ever since?—A. No.

Q. How long did he have it?—A. He had it till he stopped giving the rebate.

Mr. CAMPBELL. What year was this?

Mr. MORRISON. 1905.

WITNESS. That was in 1905.

Mr. CRAWFORD. I move to strike out all of the answers of the witness in regard to this person Russell, except such as were based upon actual conversations between the witness and Russell, on the ground that they are obviously hearsay.

Q. Well, you had this conversation that you spoke of with Mr. Russell?—A. Yes, sir.

Q. As a result of that conversation you sold him some oil. Do you remember how much it was?—A. No, I couldn't say. I filled his tank up.

Q. And how long after that before he commenced to buy oil
13718 of Blaustein?—A. He started to buy the very next delivery. We only delivered him once.

Q. You didn't make but the one delivery?—A. One delivery.

Q. How long did Blaustein have him?—A. Oh, Blaustein, I guess, had him somewhere around six months.

Q. Then did he come over to you?—A. Partly. He came partly to us and partly to the Standard.

Q. And has he been a divided customer ever since?—A. Yes, sir; until here a short while ago.

Q. Then what became of him?—A. He came back to me altogether.

Q. Did you make him any cut price?—A. No, sir.

Q. Did you ever sell him a gallon of oil for less than the regular market price?—A. I did not.

Q. Or did you ever sell him a gallon of oil for which he did not actually pay the full price?—A. No, sir.

Mr. CAMPBELL. Is this still Russell?

Mr. MORRISON. Yes.

Q. How do you know that the Eagle Oil Company stopped giving him rebates?—A. As soon as they stopped he came back to us.

Q. Well, how do you know that that was because they stopped giving him rebates?—A. The storekeeper told me.

Mr. CRAWFORD. I move to strike out the answer and all other testimony upon the subject of rebates to this customer, on the ground that it is obviously hearsay.

Q. This conversation you had, I assume, while you were visiting the trade and visiting him as a customer, seeking to ascertain the market conditions?—A. Yes, sir.

Q. Mr. Robinson says that you made a cut to a man by the name of B. Gordon. Do you remember Gordon?—A. Yes, sir.

Q. Well, what about that?—A. I never made him any cut.
13719 Q. Did you ever sell him oil for less than the market price?—A. No, sir.

Q. When I put my question in that form I mean did you, by any method whatever, by rebates or secret arrangements or anything of that sort?—A. No, sir.

Q. Was he a customer of the Standard?—A. He was.

Q. And how did you get him?—A. By talking to him; telling him he ought to buy his goods from us; get in touch with the market.

Q. Does he buy all of his goods from you?—A. I could not answer whether he is doing it to-day.

Q. Well, did he for sometime after you first procured him?—A. Yes, sir.

Q. You got this customer yourself personally, did you; by calling upon him?—A. Yes, sir.

Q. Do you know a man by the name of N. Yagle?—A. Yes, sir.

Q. Mr. Robinson says you gave him a cut. Is that true?—A. Mr. Yagle has always been a customer of the Crew-Levick Company for years, and his son is a clerk in my office.

Q. How long has his son been in your office?—A. His son has been in my office since July, 1904, I think it was.

Q. Well, did you ever make Yagle any cut?—A. No, sir.

Q. Has he always actually paid the full market price?—A. Yes, sir.

Q. The same as all your customers?—A. Yes, sir.

Q. Without any concessions, or drawbacks, or rebates of any kind?—A. Yes, sir.

Q. Do you know Becker & Company?—A. Becker? Yes, sir.

13720 Q. Spelled "B-e-c-k-e-r?"—A. Yes, sir.

Q. What is their business?—A. Selling groceries and provisions.

Q. Did you ever make them any concession of any kind from the market price?—A. No, sir.

Q. How long have you had them as customers?—A. I have not got them now. The Standard Oil Company has got them now.

Q. When did you first get them?—A. I think their trade was gotten in the year of 1902, if I am not mistaken.

Q. While you were driving tank wagon?—A. Yes, sir. Not by me.

Q. How is that?—A. Not by me personally.

Q. It was not gotten by you?—A. By one of the other drivers.

Q. Do you know C. J. Carmack?—A. I do not personally.

Q. Do you know that there is such a dealer there?—A. I have heard his name; yes, sir.

Q. Did you ever sell him any oil?—A. I suppose we have.

Q. Did you make any cut price to him?—A. No, sir.

Q. Do you know a man by the name of S. Labies?—A. Yes.

Q. What is his business?—A. Paint store.

Q. Mr. Robinson says you made a cut to him?—A. No, sir.

Q. Did you ever sell him any oil for which he didn't actually pay the full market price?—A. No, sir.

Q. Did you have any secret arrangement with him about it of any kind?—A. No, sir.

Q. Do you know E. W. Johnson?—A. Yes, sir.

Q. How long have you had him as a customer?—A. He was a divided customer for years.

Q. Divided how? Between you and what company?—A. Partly the Standard and partly ours.

13721 Q. Did you finally get his entire trade?—A. Yes, sir.

Q. Robinson says you gave him a concession of some kind, or cut rate?—A. No, sir. In the year of 1907 he came over to us, stating that the Standard Oil Company's oil wasn't good; that it smoked his stove.

Mr. CRAWFORD. I object to that testimony and move to strike it out as hearsay and as not responsive.

Q. Did you solicit his trade, or how did you happen to get it?—A. We always did have it for years, Mr. Morrison.

Q. You had part of it?—A. Yes, sir.

Q. But did you solicit him to give you all of his trade?—A. No, sir.

Q. He made some complaint about the oil. Did you give him any concession in any form from the regular market price?—A. I did not.

Q. He says that you gave a concession to a man by the name of Engles.—A. Yingling; Pennsylvania avenue.

Q. How do you spell it, do you know?—A. Yingling.

Q. What are his initials?—A. I really don't know.

Q. Did you make any cut of any kind to him?—A. No, sir. We gave his brother a position on the tank wagon as a driver.

Q. Did you do that for the sake of getting his business?

Mr. CRAWFORD. I object to that, as to the motive, as incompetent.

A. No, sir.

Q. Had you had his business before that?—A. No, sir.

Q. How long after that was it before you did get it?—A. He started to buy from us immediately after his brother went on the wagon.

13722 Q. His brother served him, did he; delivered the oil to him?—A. Yes.

Q. What business had his brother been in before that?—A. He used to work in a brickyard.

Q. His first connection with the oil business was as a driver, then, was it?—A. Yes, sir.

Q. For Crew-Levick?—A. Yes, sir.

Q. Did Yingling remain with you?—A. No, sir; he went to the Standard Oil Company. Mr. Yingling left the Crew-Levick Company and went to the Standard and the business followed there.

Q. So that it appears that the business seemed to follow this brother around wherever he had employment?—A. Yes, sir.

Q. Do you know Holiday & Company?—A. If I had the name and address I could tell you better.

Q. I don't think it was given by Mr. Robinson, but he said that that was one of the companies to which you made a cut.—A. I remember the name.

Q. Are they customers of yours?—A. Yes, sir.

Q. How long have they been?—A. Well, customers of ours for quite a while.

Q. You don't remember when they first became customers?—A. No.

Mr. CAMPBELL. You didn't make them a cut.

WITNESS. No, sir.

Q. Have they been buying of you ever since you have been manager?—A. Pretty much.

Q. Did you ever make them any cut?—A. No, sir.

Q. In any form, openly or secretly?—A. No, sir.

Q. Do you know a man by the name of A. Jacobs?—A. Yes, sir.

13723 Q. What is his business?—A. Grocery business.

Q. Mr. Robinson says you made a cut to him.—A. No, sir.

Q. You did not do it, neither openly or secretly or in any way?—A. No, sir.

Q. Do you know I. Ikenstein?—A. Yes, sir.

Q. What business is he in?—A. The same business.

Q. Grocer?—A. Yes, sir.

Q. Is he a customer of Crew-Levick?—A. Yes, sir.

Q. How long has he been?—A. I judge in the neighborhood of three or four years.

Q. Well, ever since you have been manager?—A. Oh, yes, sir; I think it was before.

Q. Has he always paid the full market price for oil?—A. Yes, sir.

Q. Has he, since you have been manager, received any concession of any kind from that price?—A. No, sir.

Q. Do you know a man by the name of M. Brenner?—A. Yes, sir.

Q. What is his business?—A. The same.

Q. And is he a customer of Crew-Levick?—A. Yes, sir.

Q. How long has he been?—A. About the same period of time.

Q. Was he a customer when you became manager?—A. He was.

Q. Had you served him from the tank wagon while you were a driver?—A. No, sir.

Q. He was not on your route?—A. No, sir.

Q. When you became manager he was one of their customers?—A. Yes, sir.

Q. Mr. Robinson says you made a cut to him.—A. I did not.

Mr. CRAWFORD. Well, how do you know, if you were a tank-wagon driver and he wasn't on your route?

13742 Mr. MORRISON. Just wait a moment, Mr. Crawford. Robinson testified that he made a cut to him.

Mr. CRAWFORD. No, he didn't. He said the Crew-Levick Company made a cut.

Mr. MORRISON. No; but he said.

Mr. CRAWFORD. No, sir. Where is the testimony?

Mr. MORRISON. Well, all right.

Mr. CRAWFORD. He says Crew-Levick did.

Q. Did Crew-Levick make any cut since you have been manager?—A. No, sir.

Q. Has he had any concession of any kind from the regular price?—A. No, sir.

Q. Do you know Gross Brothers?—A. Yes, sir.

Q. What business are they in?—A. Store business.

Q. Are they now customers of Crew-Levick?—A. No, sir.

Q. Were they at any time?—A. They were.

Q. When?—A. During 1905.

Q. Did you get them?—A. Yes, sir.

Q. How?—A. Half a cent.

Q. You gave them half a cent less than the price?—A. Yes, sir.

Q. Now, explain that.—A. That was during the time Mr. Blaustein was after our trade and offered a half a cent reduction. That

is the time I went after the Standard Oil Company business, and that is how I got several of those.

Q. That is one of the cases that you talked about?—A. Yes, sir.

Q. They were Standard Oil customers?—A. Yes, sir.

13725 Q. And did you explain to them what you understood Blaustein was doing?

Mr. CRAWFORD. I object to that as immaterial.

A. Yes, sir.

Q. And as a result of that explanation did you get an order?—A. I did.

Q. And how long did you keep them?—A. I think I had Mr. Gross about five months.

Q. And did you then cease allowing him that half a cent?—A. Yes, sir.

Q. And then what became of him?—A. Mr. Blaustein got him.

Q. Where is he now?—A. With the Standard Oil Company.

Q. Do you know a man by the name of J. V. Resside?—A. Rossing.

Q. How is it spelled?—A. Rossing.

Q. Is it J. V. Rossing?—A. Yes. He is on Cross street.

Q. What business is he in?—A. Storekeeper.

Q. Robinson says that a cut was made to him.—A. No, sir.

Q. Was he a Crew-Levick customer?—A. He was.

Q. To your knowledge how long had he been?—A. He had been a customer of ours for about three or four years prior to the time that I took charge.

Q. He was a customer when you took charge?—A. Yes, sir.

Q. Since you have been in charge of the business has he had any concession from the regular rate of any kind or character?—A. No, sir.

Q. Before that you don't know about?—A. No, sir.

Q. Was he at any time buying from any other company besides Crew-Levick?—A. Yes; he bought from the Eagle Oil Company.

13726 Q. During the time he was buying from you?—A. Yes. I lost him there for a while during 1904.

Q. Well, tell us about that. Who got him?—A. Mr. Blaustein had him.

Q. How long did Blaustein have him?—A. I wouldn't be positive on that.

Q. Did you investigate the case to see how Blaustein got him?—A. Yes, sir.

Q. What did you do?—A. He told me it was a reduced price; asked me if I could meet it. I told him "No."

Mr. CRAWFORD. I move to strike out the answer as hearsay.

Q. After that conversation you lost his trade?—A. Yes, sir.

Q. Do you know a man by the name of L. E. Woodson?—A. Yes, sir.

Q. What is his business?—A. Storekeeper.

Q. Was he a Crew-Levick customer?—A. He was.

Q. How long has he been, to your knowledge?—A. Ever since I have been managing.

Q. Was any cut ever made to him by Crew-Levick since you have been manager?—A. No, sir.

Q. Did he always in fact pay the full market price?—A. Yes, sir.

Q. Do you know a man by the name of S. Peppercorn?—A. Yes, sir.

Q. What is his business?—A. Storekeeper.

Q. Mr. Robinson says you made a cut to him?—A. I never sold him any goods.

Q. Did Crew-Levick ever sell him any goods since you
13727 have been manager?—A. No, sir.

Q. Not a gallon?—A. He is Mr. Blaustein's customer.

Q. They never made any sales to him, do I understand?—A. Never sold him a gallon of goods.

Q. Have you looked up your books to see?—A. Yes, sir.

Mr. CRAWFORD. That means only since you have been manager?—A. Since I have been manager.

(An adjournment was here taken until the morning of Wednesday, January 6, 1909, at 10.30 o'clock.)

13728 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
January 6, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Frank Ferriss, at the above time and place.

Present: On behalf of the petitioner: Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants: Mr. W. Cleveland Runyan, Mr. F. L. Crawford, Mr. Douglas Campbell.

GEORGE J. R. WOLFF recalled and his direct examination resumed as follows:

By Mr. MORRISON:

Q. Mr. Wolff, for the purpose of saving time I will name several of these persons that Mr. Robinson says you made a cut to, in a group, and then ask you about them: A. Kempler; Flexcomb; Mathews; B. Wilson; Ebelke. How about those?—A. No, sir.

Q. You made no cut in any way to them?—A. No, sir.

Q. Were they Crew-Levick customers?—A. No; they were Standard Oil customers.

Q. How did you get them?—A. I went to them and asked them to turn the business over to us, telling them what the Eagle Oil Company was doing, what the Standard was doing through the Eagle Oil Company to us—trying to drive us off the market—and they should turn the business over to us, at least partly, so as to help us to stay in this town, as it was beneficial to all to have competition.

Q. Did you testify yesterday about Alt and Gross Brothers
13729 and Ketcham?—A. Yes, sir.

Q. I think you did, and said that they were Standard customers to whom you did allow rebates?—A. Yes, sir.

Q. Mr. Robinson testified that in July, 1906, your company went to a man by the name of Pumphier, at 6 South Penn street, and offered him a half a cent off from the open market price, and that you got his business; and that you went in April, 1906, to Sam Horwitz, on Argyle avenue, and that in January you made a cut of a half a cent a gallon to Goldburg & Sirken.

Mr. CAMPBELL. Who was it testified to that effect?

Mr. MORRISON. Bruce Robinson.

Mr. CAMPBELL. These are 1906, Mr. Morrison.

Mr. MORRISON. Yes, sir; these are, I believe, all in 1906.

Q. What do you say about that, Mr. Wolff?—A. Mr. Pumphier was in 1902 a Standard customer. In 1903 he came to the Crew-Levick Company. In the latter part of 1903 he was taken away from the Crew-Levick Company by Mr. Blaustein, and Mr. Blaustein held him; then he went back to the Standard; then from the Standard he came to us.

Q. Was he one of the Standard customers to which you made a cut?—A. Yes, I made him a cut.

Q. Of how much?—A. Half a cent.

Q. When do you say that he was a customer of the Crew-Levick Company? What was the period?—A. In 1902.

Q. Do you know how they lost him?—A. Mr. Blaustein cut him.

Q. Do you know whether or not any effort was made afterwards by Blaustein to get him away from you on a cut?—A. Yes, sir.

13730 Q. What success did he have?—A. None. He did not fulfill the promises that he had made in his previous transactions.

Mr. CRAWFORD. I move to strike out the last three answers of the witness on the ground they are obviously not based on personal knowledge.

Q. How about Sam Horwitz?—A. Sam Horwitz?

Q. Yes. He says you gave him a cut.—A. I never did. Sam Horwitz telephoned for me on Friday night to come over and fill his tanks. He asked me whether I could give him the oil for less money. I told him no, I couldn't. I says, "Why don't you buy from the Eagle Oil Company; they are doing it?" He says, "Yes, but he won't come here." He says, "Well, you send your wagons over and fill the tanks." I filled the tanks. On the following day Mr. Blaustein went there and he filled the tanks. Then Mr. Blaustein had him for a while, and Mr. Blaustein stopped giving him a rebate and he immediately came back to us. I had him for a short while, then I lost him again. Mr. Blaustein took him away from me again.

Mr. CRAWFORD. I move to strike out the witness' answer, so far as it relates to anything concerning Blaustein, as being based upon hearsay.

Q. Did you at any time make a cut to Horwitz?—A. No, sir.

Q. You sold him at the same price you sold your trade in general?—A. Yes, sir.

Q. Did you make a personal investigation each time when he changed from one to another?—A. I did.

Q. Did you talk with him about it?—A. I did.

13731 Mr. CRAWFORD. I move to strike out the last answer on the ground that it is palpably hearsay, and all the testimony preceding in regard to this transaction, since the witness now admits that he got his information by hearsay.

Q. What about the firm of Goldberg & Sirken?—A. Never gave them any rebate.

Q. Did you give them any concessions of any kind?—A. No, sir.

Q. Mr. Robinson also mentions the name of M. Berkow. What was there about Berkow?—A. Berkow always has been a divided customer, until about a year ago, when the Standard driver that was supplying him from the Standard wagon left the Standard Oil Company and came to me; then he got the balance of the business. There are two of my wagons going there now; both drivers.

Q. Did you make him any cut?—A. No, sir.

Q. Did you give him any oil?—A. No, sir.

Q. Five gallons of oil free on every 500 gallons of oil that he purchased from you?—A. No, sir.

Q. Did you give him any oil?—A. No, sir.

Q. Did you give him any consideration whatever to obtain his trade?—A. None whatever.

Q. Mr. Robinson testified that the Home Safety was not used to threaten pedlers and grocers in Baltimore. Do you know anything about that, Mr. Wolff?—A. Yes, sir.

Q. What do you know about it?—A. A little over a year ago one of the Standard drivers had a falling out with the Standard Oil Company and came to me and asked me whether I could give

13732 him a wagon. I did so, and he turned about seventy-five per cent of his trade that he had been serving on that wagon for the Standard Oil Company over to us. Immediately after he brought his business over to us, Mr. Blaustein, Mr. Robinson, and another man from out in Hampstead were brought down to try and get this business back. They put two extra wagons on the street in addition to what was there, and when they were not successful in getting this business away from this man, then they sent a Home Safety wagon into this territory, going from house to house, trying to get the business back in that way.

Mr. CRAWFORD. I object to the testimony and move to strike it out on the ground it is obviously based upon hearsay. You weren't present when that wagon was going about, were you?

WITNESS. I certainly was when it was there. I saw the wagon going.

Mr. CRAWFORD. Did you see it at every place where it called?

WITNESS. Not each and every place. I didn't stay all day long.

Mr. CRAWFORD. No, you didn't. Were you present when Mr. Blaustein got any instructions to take that wagon out?

WITNESS. No, sir; I was not.

Mr. CRAWFORD. How do you know Mr. Blaustein sent the wagon out?

Mr. MORRISON. Suppose you wait until we get through, if you want to cross-examine this witness.

Mr. CRAWFORD (to the witness). You don't know anything about it, do you?

13733 The EXAMINER. I think that is cross-examination.

Mr. MORRISON. Wait and just answer my questions.

Q. You were on the streets all the while?—A. I was.

Q. And you saw these wagons go in there, if I understand you?—A. Yes.

Q. Was it a part of your business to keep track of the trade?—A. Yes, sir.

Q. And you learned these things in the course of that business?

Mr. CRAWFORD. I object to that question as entirely improper, because it calls for hearsay testimony and is an attempt to justify hearsay testimony.

A. Yes, sir.

Mr. CRAWFORD. This stenographer yesterday repeatedly failed to put my objection down after the question, putting the answer first. I want it understood when I make an objection to the question that it goes down ahead of the answer.

Mr. MORRISON. Well, you make it ahead of the answer.

Mr. CRAWFORD. Your witness answers so quickly that nobody gets time. It is the duty of the stenographer when I make my objection promptly to put it down right——

The EXAMINER. You can not expect the stenographer to put it down out of order. He has to take it right along if it comes after the question.

Mr. CRAWFORD. I think, then, your honor should instruct this witness to wait until I make my objection to the question.

The EXAMINER. That is right, of course. You see the

13734 stenographer has to move right along; he can not go back.

Mr. CRAWFORD. There were a number of cases yesterday where I made my objection immediately. There was no delay, but the minutes show the contrary.

Mr. MORRISON. I have no doubt the minutes are absolutely correct.

The EXAMINER (addressing the witness). When the counsel makes an objection you should wait.

Mr. MORRISON. I am fully aware that this witness does answer very quickly. I am aware of that.

The EXAMINER. Well, witnesses do not understand that; they do not understand objections.

Q. You testified yesterday, I believe, that in 1902, up until the time that you succeeded Mr. Davidson, you drove a tank wagon for Crew-Levick & Company. During that time was the Eagle Oil Company in business in Baltimore?—A. They were.

Q. Who was managing it?—A. Mr. Blaustein.

Q. Do you know what customers and what trade Blaustein solicited with the Eagle during that period?

Mr. CAMPBELL. Do you know, Mr. Wolff?

WITNESS. Yes, sir. Crew-Levick's customers.

Q. And how do you know that?—A. By seeing him in the stores himself.

Q. Did you see him daily?—A. Yes, sir.

Q. Did you know at that time who the customers of Crew-Levick were and who the customers of the Standard were?—A. Yes, sir.

13735 Q. How did you learn that?—A. On my particular route I knew every storekeeper in that section.

Q. Now, I assume that in that same route, along the same street, there would be customers both of the Standard and of Crew-Levick & Company and perhaps of others?—A. Yes, sir.

Q. So that in making your daily trips you would come in contact with the customers of all of the different companies?—A. Yes.

Q. Well, when you took a customer away from the Standard do you know whether or not Blaustein then went to that customer?—A. Yes, sir.

Q. How do you know that?—A. By seeing him there myself.

Q. Did you have any talk with the trade about keeping posted as to what Blaustein's prices were?

Mr. CRAWFORD. I object to that as asking for hearsay testimony.

Q. The question is whether you talked with the trade about it first?—A. Shall I answer that? Yes.

Q. Did you keep pretty well posted about it?

Mr. CRAWFORD. I object to that.

A. I did.

Mr. CRAWFORD. Now, there is an instance right now. I want to have my objection go in ahead of that answer. This witness snaps in his answer designedly before I can get an objection on the record.

WITNESS. I beg your pardon; it is merely my quick actions. I am very quick.

Mr. CRAWFORD. I want to have my objections go in ahead.

13736 I ask the examiner to direct the stenographer to place this objection ahead of the answer.

The EXAMINER. The stenographer has got to write as the words fall on his ear. He can not stop. The witness is to blame.

WITNESS. I will try to go a little slower.

The EXAMINER. Of course the witness can not anticipate. The trouble is, you see, with some of the questions a prompt answer is proper, and others you want a chance to object. [Addressing the witness] Don't be quite so swift, Mr. Witness; let the counsel have a chance.

Mr. CRAWFORD. I object to the witness' last answer, and move to strike it out on the ground it calls for hearsay testimony.

Q. Did you learn while you were coming in contact with the trade in the way that you have mentioned how Mr. Blaustein made his prices and what prices he made to the different customers?

Mr. CRAWFORD. I make the same objection.

The EXAMINER. Answer the question.

A. Yes, sir.

Q. Well, what was his method of doing business?

Mr. CRAWFORD. Same objection.

A. He would offer a quarter of a cent, or offer to give the lady of the house a silk dress, a coal-oil stove, electric fans; anything at all to get the business.

Mr. CRAWFORD. I move to strike out the witness' last three answers on the ground that they are palpably hearsay.

13737 Q. Do you know whether he made a cut in the price?—A. He did.

Q. Aside from offering these things?—A. He did.

Q. How low did he go at any time?—A. Well, at different periods, as low as a cent.

Q. And were these low prices made to the Crew-Levick customers?

Mr. CRAWFORD. I object to that.

A. Yes, sir.

Q. Can you name some of them?

Mr. CRAWFORD. I object to that on the same grounds.

The EXAMINER. The question is, whether you can name them. Answer that yes or no.

WITNESS. Yes, sir.

Q. Well, name some of them.—A. Sause, P. C. Miller, Reffman, Loos, Schmidt. I could name you hundreds of them.

Q. Do you remember a man named Ben Whitman?—A. Yes, sir. That was in the latter part of 1905.

Q. Mr. Blaustein testified that he never put a man on the route by the name of John Ruehl. Do you remember John?—A. Yes, sir.

Q. Who was he?—A. He was a peddler on North Gay street.

Q. From whom was he buying his oil?—A. The Red "C" Oil Company.

Q. When was this?—A. In 1903.

13738 Q. What do you know about a man being put upon his route?—A. The driver who is at present in my employ, formerly with the Eagle Oil Company, was placed on this man's route, and each and every customer was put down in a book. Afterwards he was put on the wagon to go around to this man's trade and take it away from him.

Q. Did you see him while he was doing this?—A. Yes, sir.

Q. What is his name?—A. Dixon.

Q. Warren Dixon?—A. Warren S. Dixon.

Q. How long was he on Ruehl's route?—A. Only a short while.

Q. What next took place?

Mr. CRAWFORD. I wish to move to strike out all of the testimony of the witness in regard to this man Dixon and his alleged relations

with Ruehl, and everything about Ruehl, on the ground that it is based upon hearsay, and also on the ground that it is not proper rebuttal, the testimony of the defendants in regard to Ruehl having been offered in defense of testimony of the petitioner in chief, and this testimony now opening up new matter.

Q. Had you finished your answer?—A. No, sir; I had not.

Q. Well, did a man by the name of George Ruehl have anything to do with this same man's route?—A. Yes, sir; he was the next man placed on the wagon.

Q. Did he follow Dixon?—A. He did.

Q. Who was George Ruehl?—A. George Ruehl is the son of a yeast manufacturer—yeast powder—on Madison street and Dallas.

Q. What had he been doing just before he went onto Ruehl's
13739 route?—A. He was working for Mr. Bankert.

Q. Who was Bankert?—A. He was one of the agents of the Standard Oil Company.

Q. How long was he on Ruehl's route?—A. Only a short while.

Q. Did you see him there yourself?—A. Yes, sir.

Q. Do you know what price was made by these parties to Ruehl's customers?—A. Yes, sir.

Mr. CRAWFORD. How do you know?

WITNESS. I saw Ruehl's receipt.

Q. What price did he make?

Mr. CRAWFORD. I object to that as calling for hearsay and for the contents of written documents which are not accounted for.

A. The receipt was made out for five gallons of gasoline at 6 cents.

Q. Was that a cut?—A. Oh, my, yes. It was 3 cents below what he could buy it from the tank-wagon man.

Mr. CRAWFORD. I move to strike out the answer of the witness as being an answer palpably giving the contents of a written document not produced or accounted for.

Q. Did you visit the trade yourself?—A. No; I saw this one particular party; three of them I knew personally myself, and they approached me on the street on the subject and told me about it, told me what they were doing.

Mr. CRAWFORD. I move to strike out that answer as being palpably hearsay.

Were you selling any of them oil?—A. No, sir; they were
13740 retail customers.

Q. I want to show you defendants' Exhibit 210, which purports to be a photographic copy of a contract. Were you in the service of Crew-Levick & Company when that contract was made?—A. I was in the service of the company. But this is not the first time I seen it.

Mr. CRAWFORD. That is not the question.

Q. Do you know the parties to this contract?—A. I do.

Q. Who was Crook?—A. Crook is one of the largest merchants in Baltimore.

Q. How many stores did he have?—A. At that time, thirteen.

Q. And Davidson is the same Davidson, is he not, who was manager of Crew-Levick at that time?—A. He was.

Q. How long after the date of the making of this contract was it that Davidson quit the service of the Crew-Levick Company?—A. About three months and a half, I judge.

Mr. MORRISON. What is the date of that contract?

Mr. MORRISON. "This *blank* day of January, 1904."

Q. Did you know anything about this contract being circulated upon the streets?—A. In the latter part of April, 1904, the contract was circulated after Mr. Davidson was away from the Crew-Levick Company.

Q. Circulated pretty generally, was it?—A. Yes, sir.

Q. By whom?—A. By Mr. Blaustein and Mr. Davidson.

Q. You may go on and give the history of Mr. Davidson's connection with the Crew-Levick Company at about the time of the making of this contract, whether any trouble arose and what finally caused the severance of the connection between Crew-Levick Company and Davidson.

13741 Mr. CRAWFORD. I object to that as immaterial, not proper rebuttal, and opening up new matters.

A. In the latter part of 1902 I continually talked to Mr. Davidson, to try and get some of Mr. Blaustein's business away from him, as he was constantly after our trade, getting ours, all the drivers coming in and complaining that they had lost business after business——

Mr. CRAWFORD. I ask to strike out the last part of the witness's answer, as hearsay.

Mr. MORRISON. He has not completed his answer yet.

Mr. CRAWFORD. Well, that part of it.

WITNESS. I then received his permission to see Mr. Crook. I approached Mr. Crook on the subject. I was serving one store, the balance was served by Mr. Blaustein; and I asked Mr. Crook one day what was in the way of our getting all his business. This one store I had gotten through Mrs. Zino, who had retired from business and sold her store to Mr. Crook, partly through my efforts, and, in return, she asked Mr. Crook to let me continue serving this store. There is where I got acquainted more with Mr. Crook. And I asked him for his business. I made then an appointment for Mr. Crook with Mr. Davidson, and in January, I think—it seems to me like it was in December, the latter part of December, if my recollection is correct—we started to serve Mr. Crook.

Q. At all his stores?—A. Yes, sir.

Mr. CRAWFORD. What year was that?—A. I think it was in 1903; December, 1903, it seems to me. I may be wrong in that. It may be that it was January, 1904. But, as far as I can recollect, it

13742 seems to me that it was 1903, in December. Shortly after that Mr. Davidson came to me and stated that the Crew-

Levick Company had lost $50,000 in Baltimore city during the month——

Mr. CRAWFORD. I object to that as outrageously hearsay, and ask that it be stricken out.

Q. Go ahead, Mr. Wolff.—A. ——during the month of March, and that he had been to see Mr. Goodwille, making arrangements for Mr. Goodwille to reequip the old Canton station, have five wagons there, painted in our colors, with the name of William G. Davidson. He was then to run this business for the Standard Oil Company. That thereafter we would get better wages, and also would not have this worry on the street, with Mr. Blaustein; everything would then be harmony on the streets. We were to go there on a Monday morning. I refused to do it.

Mr. CRAWFORD. I move to strike out the entire answer of the witness as being, on the witness' own statement, clear and unadulterated hearsay—outrageously so.

Q. Did you at about this time have a talk with any representative of the Standard Oil Company?—A. Yes, sir. Mr. Blaustein came to see me on the street.

Q. What did he say?—A. He said, "By the way, I owe you a box of cigars, don't I?" I says, "No, you owe me two." He had made two bets with me, and he lost both. "Well," he says, "I have got one here; it is a good one; it is Cremo; I always smoke good cigars." He says, "Why do you work for the Crew-Levick Company? Why don't you come to work for me? As long as you stay with Crew-Levick Company you will never be anything else than a common oil driver, and you ought to have a better position." I says, "If
13743 I am worthy of a better position, my firm knows it as well as you." Furthermore, I said, "Mr. Blaustein, don't talk to me on the street any more." I said, "There is so much of it, and when you come to my office it looks like I am dickering with you people, and I am not; I don't want anything to do with you, and please don't talk to me on the street." He then said, "I will come to your house; I am not too proud." I says, "You don't have to be proud to come to my house; mine is as good as yours." And he says, "Come to my house, then." I said, "No, sir; I care not to have any dealings with you." He says, "Well, I will be at your house to-night." "I will not be at home; I am going out to-night; I am going out every Saturday night." He says, "Where do you go to?" And, in an off-handed way, I told him. When I arrived there that night, Mr. Blaustein was there. He asked me to have a glass of wine. I at first refused, but then, for courtesy sake——

Q. Don't go too much into detail.—A. In that conversation he offered me $150 a month and $30 spending money to come with the Eagle Oil Company, and a horse and carriage for six months; and the second six months $200 and thereafter, and for my own lawyer to draw up the contract. The only way I got rid of him that night——

Q. I don't care about how you got rid of him.—A. All right, sir.

Q. I want to get to the point. Did it result in anything?—A. It did not. He stated that night that I would be served exactly the same as another driver had been, who had been discharged that
13744 day. The following week Mr. Davidson began his "karroos" with me.

Mr. CRAWFORD. I move to strike out the answers to the last three questions, and all testimony in regard to conversation with Blaustein, on the ground that they are not proper rebuttal, that they in no way meet any evidence or testimony offered by the defendants, and that they relate entirely to new matter.

Q. Let me ask you whether or not at about this time you had a conversation with Mr. Roth, a representative of the Standard Oil Company.—A. I did.

Mr. CRAWFORD. What time was this?

Q. Who was Mr. Roth?—A. He was at that time the manager of the East Baltimore station of the Standard Oil Company.

Mr. CRAWFORD. When was this?

Q. About when was this?—A. That was about a week before Mr. Blaustein approached me.

Mr. CRAWFORD. What was the year and month?

WITNESS. The first part of April, 1904.

Q. What did Roth say to you?

Mr. CRAWFORD. I object to this as not being proper rebuttal.

A. He had been repeatedly asking me to sever my connections with the Crew-Levick Company and come over to him; and on this occasion he stated that my coming or staying away would be the making or breaking of him, and showed me a letter signed by Mr. Goodwille—or Mr. West, giving him authority to make arrangements with me to get my services. He showed me this letter and said, "Are you satisfied now that I have the right to do so?" I said "Yes;
13745 but I don't care to come over with you people."

Mr. CRAWFORD. I move to strike out the answer of the witness so far as it relates to the contents of an alleged letter, on the ground that it is an attempt to give the contents of a written document which is not produced or its absence accounted for; and further object and move to strike out the entire answer on the ground that it is not rebuttal, that it meets no evidence or testimony offered by the defendants, and that it opens up new matter.

Q. Where did this conversation take place?—A. At the corner of Caroline and Madison.

Q. Did you have any conversation with him at your house?—A. Yes, sir.

Q. On the same subject?—A. Yes, sir.

Q. Before or after this conversation?—A. After.

Q. What conversation did you have with him at your house?

Mr. CRAWFORD. We desire to offer the same objection—that this is not proper rebuttal.

A. During the last week of Mr. Davidson's connection with the Crew-Levick Company I was attempted to be placed in front of the customers as an unreliable man——

Mr. CRAWFORD. I move to strike that out as palpably hearsay.

Mr. MORRISON. That may be stricken out.

Q. I will ask you now in reference to Davidson, as I think that comes in, naturally, ahead of your conversation with Roth at your house. Now, at about this time, what sort of treatment did
13746 you receive from Davidson, who was then the manager of Crew-Levick? Just recite that briefly.

Mr. CRAWFORD. I object to it as entirely immaterial, and not proper rebuttal.

A. My wagon was bucketed off every night.

Q. Had it ever been done before?—A. It had never been done before; no, sir.

Q. Go right on now. What else?—A. This was on the first two days. On the third day (Wednesday) the man that went along with me on the route stepped up to me and stated that he had orders to handle the book. I asked him whether he was to handle the cash also. He said, "Yes." I immediately went to the phone and called Mr. Davidson up and asked him what the cause of it was. He said, "This is orders from the home office and will have to be done to every man." I said, "Do you know what it looks like?" He says, "Oh, you ought not to mind it; the insurance people do it." I said, "This is oil business, not insurance." And I said, "If every man has got to stand it, I can do the same." On Friday morning my old buckets were off the wagon and a new set of buckets. One of the other drivers called me, and he opened his box and showed me one of my buckets. The buckets had been taken off my wagon and put onto another wagon, and a brand new set of buckets placed on mine, making it appear that my buckets had been short—that I had been robbing the customers. The first store I went to I pulled the buckets out of the wagon——

Q. I don't care about going into that.

Mr. CRAWFORD. I move to strike out the entire answer of the witness as hearsay, immaterial, not proper rebuttal, an not re-
13747 sponsive to any testimony or evidence offered by the defendants, and opening up new matter.

Q. At about that time did Davidson do anything else to humiliate you in the conduct of your business, aside from what you have already told us?—A. Well, the only thing he done after that—on Saturday I handed him my resignation, and Mr. McDonald was there at the time.

Q. Who was McDonald?—A. Our general manager. He had been in Baltimore investigating Mr. Davidson's affairs. And he asked me not to resign but to stay.

Mr. CRAWFORD. I wish to repeat my objection and motion as before on the same grounds.

Q. At about this time did you have a conversation with Mr. Roth, the representative of the Standard?—A. That Saturday night.

Q. That Saturday night?—A. When I came home he was in the house.

Q. You may state the conversation you had with Roth.—A. He was in my house that night——

Mr. CRAWFORD. Wait a minute. I object to the giving of the conversation as being hearsay, immaterial, and not proper rebuttal.

A. He was in my house that night, asking me, still, to come with the Standard Oil Company, not to believe what Mr. McDonald had stated to me, that Mr. McDonald would get rid of me the very next day, that this was only temporarily that he was holding me there; and the only way I got rid of him was by asking him to let me sleep over it and I would let him know the following day. The
13748 next morning I got up bright and early to get away from him, but he was there before I got out of the house.

Q. At your house?—A. Yes, sir.

Q. Was he at your house or at your office that morning?—A. At my house.

Q. Did you have further conversation with him that morning?—A. Yes, sir. He stated, that morning, "If you go down to the office to-morrow and find that everything is not satisfactory, come at once down to our place; I will have a wagon loaded and hooked up ready for you to go out with."

Q. What did you do?

Mr. CRAWFORD. I move to strike out all testimony in regard to this last alleged conversation with Roth, as not being rebuttal, not in answer to any testimony or evidences offered by the defendants, and opening up new matter.

A. When I arrived at the place, on Monday morning, my team was hooked up ready to go out, and orders with the stable man not to let me take that team out.

Q. Who was then in charge?—A. Mr. Davidson.

Q. Where was McDonald?—A. McDonald was back in Philadelphia. I took the wagon out, telling Mr. Davidson that if he would go near the wagon I would send him to the hospital.

Q. I don't care about your conversation with Davidson. You took your wagon out?—A. Yes, sir; at nine o'clock, and then I telephoned to the Philadelphia office, stating the facts, and Mr. McDonald came down on Tuesday and I was appointed in Mr. Davidson's place.

Q. Did McDonald know the way that Davidson had been treating you?—A. Yes, sir.

13749 Mr. CRAWFORD. Hold on. I object, and move to strike out the last answer, on the ground that the statement must be based upon hearsay; and I move to strike out the last and all preceding answers concerning conversations with Roth and transactions with Davidson and McDonald, on the same ground as before—that they are not rebuttal nor in response to any testimony of the defendants, and open new matter.

Q. Did McDonald know about your conversation with Roth, the Standard Oil man, and with Blaustein?—A. No, sir.

Q. Davidson was discharged at that time, was he?—A. Yes, sir.

Q. And you became manager at that time?—A. Yes, sir.

Q. And have since held that position?—A. Yes, sir.

Q. What did Davidson do then?—A. I took charge on Wednesday night, and on Thursday morning when I arrived at the place I didn't have a wagon driver to take the wagons out; every driver was with the Standard Oil Company.

Q. How many drivers had left you in the meantime?—A. Five. Four. I was the fifth. Four drivers.

Q. Four had left?—A. Yes, sir.

Q. And had they found employment with the Standard?—A. Yes, sir; two with the Standard and two with the Eagle.

Q. What became of Davidson?—A. Mr. Davidson went with the Eagle. He got a wagon from Mr. Blaustein and had it painted in our colors, with his name on, and he was on the street in opposition to us also.

Q. How long after he was discharged by Crew-Levick was it before he appeared on the streets with this wagon?—A. About three weeks.

13750 Q. How long after that before you first came in contact with this contract here, a copy of which is marked Defendants' Exhibit 210?—A. It was during the time that Mr. Davidson was going around, about three to four weeks after I became manager.

Q. Did Davidson remain in business long?—A. No, sir.

Q. You spoke about your drivers leaving you and disappearing when the change was made there. Did any of your books disappear at the same time?—A. All of the route books disappeared.

Mr. CRAWFORD. I object to the answer as immaterial, and move to strike it out.

Q. Were you familiar with the Crook situation at the time this contract was made?—A. No, sir.

Q. Up until that time do you know whether they had been practically customers of the Standard?—A. Customers of the Eagle Oil Company.

Q. Up until that time; yes.—A. Prior to that the Red "C's" customers.

Q. They had been taken away from the Red "C" by the Eagle?—A. Yes, sir.

Q. All of Crook's stores?—A. Yes, sir.

Q. There was a time when you had one store?—A. One.

Q. When was that?—A. Mr. Crook, I think, took that store about May, 1903.

Q. Do you know whether or not the Eagle Oil Company gave any concessions to Crook for the purpose of getting his business?

13751 Mr. CRAWFORD. I object to that as not proper rebuttal, and as calling for hearsay.

A. Mr. Crook always got a rebate from Mr. Blaustein, as well as the Standard.

Q. What customers did the Eagle Oil Company solicit and the Davidson Oil Company solicit after Davidson went on the streets?—A. Crew-Levick Company's.

Q. Do you know whether they had any list of the Crew-Levick Company's customers?—A. Mr. Davidson had the books.

Q. You say that Davidson had this wagon painted in your colors. What were your colors, or the colors of your wagon?—A. Yellow running gear, red tank and cab.

Q. What was the color of the Eagle Company's wagons?—A. White.

Q. Were both Davidson and the Eagle Company on your route, then, at the same time?—A. Yes, sir.

Q. Did they get any of your customers away from you?—A. They did at first, temporarily, yes.

Mr. CRAWFORD. I move to strike out all the testimony in regard to the alleged actions of Davidson after he left the employ of the Crew-Levick Company was arrested in Baltimore for selling oil opens up new matter.

Q. How many stores did Crook have at this time?—A. Thirteen.

Q. Mr. Blaustein testified that some time in February, 1904, the Crew-Levick Company was arrested in Baltimore for selling oil which did not come up to the test. Do you remember that occasion?—A. Yes, sir.

13752 Q. How many people in all were arrested at that time?—A. All told, in Baltimore city.

Q. Yes.—A. Somewhere around thirty-five.

Q. Besides the Crew-Levick Company, those were what—dealers, or who were they?—A. Dealers.

Q. Customers of Crew-Levick?—A. And a few of the Red "C."

Q. What became of those cases? Was anybody ever fined, or did any convictions result from any of them?—A. Some of them were dismissed in the station house before Police Justice Garland; others were sent to the grand jury and dismissed there.

Q. Were any fines paid—any final convictions in any of those cases?—A. There was one before a magistrate.

Q. Whose case was that?—A. Mr. Crook.

Mr. CRAWFORD. One moment. I move to strike out the last answers of the witness on the ground that they profess to give the contents of official records which are not produced or accounted for.

Mr. MORRISON. We are giving it exactly as Mr. Blaustein gave it.

Mr. CRAWFORD. Oh, no. He said that they were arrested.

Mr. MORRISON. But he had no records whatever.

Mr. CRAWFORD. He said they were arrested.

Mr. MORRISON. Well, if they were arrested there were records of it.

Mr. CRAWFORD. What does this witness know about the grand jury?

Q. Well, you were right there, weren't you?—A. Yes, sir.

13753 Q. Knew all about those cases?—A. Yes, sir.

Q. Now, you say that Mr. Crook was convicted. Do you know whether he was tried or whether he pleaded guilty?—A. He was tried.

Q. Did you find out who he was tried before?—A. He was tried before Mr. Blaustein's brother-in-law.

Q. Oh, yes. And that is the only man that had to pay any fine.

Mr. CAMPBELL. Were you present at the trial?

WITNESS. I was not present at that trial.

Mr. CAMPBELL. How did you hear about it?

WITNESS. The attorney.

Mr. CAMPBELL. Told you?

WITNESS. Our attorney.

Mr. CAMPBELL. Told you?

WITNESS. Benzinger.

Mr. CAMPBELL. Told you?

WITNESS. Yes, sir.

Mr. CRAWFORD. I move to strike out the testimony as being hearsay; also as not being proper rebuttal, and as stating what is a matter of official record, the record not being produced.

Mr. MORRISON. You have got that in two or three times now, to this same thing.

Q. You learned afterwards, did you, the relationship between these men?—A. Yes, sir.

Mr. CRAWFORD. What was the magistrate's name?

WITNESS. Goldman.

Q. Do you know his first name?—A. Harry.

13754 Mr. CRAWFORD. I move to strike out this last answer, and all testimony in regard to this alleged relative of Blaustein, on the ground that it is new matter, not rebuttal.

WITNESS. Our case was tried in court—the Crew-Levick—direct.

Q. But it didn't result in any conviction?—A. No, it was dismissed—not guilty.

Q. I don't care about that. I don't care to go into the details. Now, Mr. Blaustein testified that when he went back into the business, after Mr. Fehsenfeld had advertised him, that he solicited everybody and everybody's customers. Do you know anything about the Eckels Brothers?—A. Yes, sir.

Mr. CRAWFORD. Wait a minute. I ask to have that answer stricken from the record until I have made my objection.

The EXAMINER. It may be stricken out.

The question was read.

A. I do.

Q. What do you know about them?—A. Fred and Henry W. Eckels worked for the Standard Oil Company—Fred——

Q. When was this?—A. In 1899; up to 1899. Henry Eckels had a little trouble with the Standard Oil Company, and he was discharged for having too much to say.

Q. I don't care about details. He was discharged. Then what became of his brother?—A. The two of them left and came to the Crew-Levick Company. The one was driving a wagon in East Baltimore; the other one, as we term it, in Baltimore, Jew town.

Mr. CAMPBELL. Were you with Crew-Levick at this time in 1899?

13755 WITNESS. No, I was not.

Mr. CRAWFORD. We interpose an objection to this, on the ground that it is obviously not within the knowledge of the witness.

Q. That was before you were with Crew-Levick?—A. That was before I went with Crew-Levick. But I was on the car and I saw it every day.

Q. Who were you working for?—A. The United Railway and Electric Company.

Q. What were you doing?—A. Motorman on the street car.

Mr. CRAWFORD. I object to this——

Mr. MORRISON. Just wait a minute.

Q. State what you know about this transaction, and knew of your own knowledge.

Mr. CRAWFORD. Did you come in contact with the trade? Were you in the business at that time?

WITNESS. No, sir; I was not in the business.

Mr. CRAWFORD. I would like to ask counsel for the Government——

Mr. MORRISON. If you will just wait a minute and give me a chance, I will find out what he knew about it.

Q. What year was this in?—A. 1899.

Q. And you went with Crew-Levick when?—A. In 1902.

Q. Did you learn anything about this after you did go into the business?—A. Yes, sir.

Q. From what sources? From simply what people told you, reciting something that had transpired in the past?—A. Yes, sir.

Mr. MORRISON. I won't ask for that. You may strike that out.

Q. You didn't learn this, as I understand you now, as you came in contact with the business, but these people told you about

13756 it after you went into the business, and they were simply relating something that happened in the past, before you were in the business?—A. This was personal observation.

Q. Well, as a motorman?—A. As a motorman—going along the streets; and asking questions, from different parties.

Mr. CAMPBELL. He noticed it from the platform of the car.

Q. Well, you had no interest in the business at that time?—A. No, I had not.

Mr. CRAWFORD. Do I understand that you consent to strike out everything in regard to these Eckels people?

Mr. MORRISON. Yes, everything in regard to the Eckels.

Q. Is there any custom in reference to loaning or giving away tanks among oil people?—A. The companies always have been loaning tanks to the customers, as the Standard Oil Company, Red "C," and ourselves, up to about—oh, I guess within the last year.

Q. Do you know whether the Standard Oil Company followed the same practice?—A. We were compelled to do it on account of that.

Q. Well, answer the question. Did they follow that same practice?—A. Yes, sir.

Q. Do you know to what persons they loaned or gave tanks—what dealers?—A. Well, I don't think there are fifty stores in Baltimore that own their own tanks; and it is only about three or four months ago when I lost a good customer on account of the tank; he wanted a hundred-gallon tank, a sixty-gallon tank was too small, and I told him I would sell him one; and the Standard Oil Company——

Q. I don't care about that.

13757 Mr. CRAWFORD. I move to strike out this answer on the ground that it is not rebuttal, and opens up new matter.

Q. What I want to know is whether at any time the practice prevailed among the oil dealers, including the Standard, to loan tanks or give away tanks, and whether that practice is still in force.

Mr. CRAWFORD. I object to the question as calling for an answer which is not proper rebuttal and opens up new matter.—A. It always has been the practice, but it is not in force now. We are trying to do without it now.

Q. Well, is that true of all of the companies?—A. I can only answer for myself and Mr. Fehsenfeld. He has been speaking to me about it.

Q. Do you know whether the Standard are doing it now or not?—A. Yes; I heard of this one particular case that I can recall——

Mr. CRAWFORD. I move to strike out the testimony about the Standard, as being palpably hearsay, on the witness's own statement.

Q. Was that an old tank, that has been in there sometime, of the Standard's, or was it a new tank?

Mr. CRAWFORD. I object to this, further, on the ground that it is not rebuttal, and being new matter.

A. That was a new tank.

Mr. CAMPBELL. Have you seen the tank?

WITNESS. I have not.

Mr. CRAWFORD. Then I move to strike out the answer as being hearsay.

Q. Are the dealers around Baltimore pretty generally supplied with tanks that have been furnished them by one oil com-

13758 pany or another?—A. Yes, sir.

Mr. CRAWFORD. I move to strike out all this testimony in regard to the loaning or giving of tanks, as not being rebuttal, and as opening up new matter.

Cross-examination by Mr. CRAWFORD:

Q. Mr. Wolff, you say that you went into the employ of the Crew-Levick Company in January, 1902?—A. Yes, sir.

Q. Prior to that time what position were you in?—A. Running a street car.

Q. You had not previous to that time been with the Crew-Levick Company, had you?—A. No.

Q. Nor with any oil company in the city of Baltimore?—A. No.

Q. Had you ever been in the business at all, before that?—A. No.

Q. How long were you a motorman?—A. Nine or ten years.
Q. All in the city of Baltimore?—A. Yes, sir.
Q. How old a man are you, Mr. Wolff?—A. Forty-two.
Q. You are not a native of this country, are you?—A. No, sir.
Q. When did you come here first?—A. I came here when I was sixteen years of age.
Q. About 1880?—A. I couldn't tell you whether it was in 1880. I was a youngster then. I didn't pay any attention.
Q. Where did you live after you came here, first?—A. In Baltimore.
Q. You always lived in Baltimore?—A. Yes, sir.
Q. Since you came to this country?—A. Yes, sir.
13759 Q. The Crew-Levick Company, you said, does business throughout the United States, as I understand you. Do you mean that they do business quite generally throughout the United States?—A. Well, only from what reports I have. Personally myself I don't know, except I know a few stations throughout Pennsylvania, that I have been to see; and from what some of our men have been telling me. That is all I know.
Q. Well, you are in the position of a manager there. You know something about the general business of the company?—A. Only in Baltimore.
Q. You know something about the business of the company outside, don't you?—A. No; only in Baltimore.
Q. Where does the oil come from that you sell in Baltimore?—A. At the present time?
Q. At any time? Take it in the years 1904 and 1905?—A. From Warren.
Q. Has the company a refinery at Warren?—A. Yes, sir.
Q. It has some other refineries, too, hasn't it?—A. The Glade Oil Works.
Q. Where was that situated?—A. In Warren.
Q. Has it any other refinery than that?—A. Yes; there is one in Strothers.
Q. What is the name of that?—A. I can't just recall the name of it.
Q. The Muir Oil Works?—A. The Muir Oil Works; yes.
Q. It has still another, hasn't it, called the Seaboard Oil Works?—A. I have heard of the Seaboard, but I don't know where it is.
13760 Q. Don't you know that it advertises to have a refinery called the Seaboard Oil Works?—A. Yes, but I have never seen it.
Q. You have seen the advertisement, haven't you?—A. Yes, I have seen the advertisement.
Q. You don't doubt it is true, if they advertise it, do you?—A. Oh, I suppose it is.
Q. You don't doubt it is true if they advertise it?—A. I don't see why they should do anything like that.

Q. You would not doubt the advertisement of your own company, would you?—A. No, sir.

Q. They also advertise, don't they, the Warren Gasoline Works?—A. I have never seen it.

Q. Have you never seen the advertisement of that?—A. No.

Q. Don't know about that. You do know, at any rate, either from personal knowledge or from seeing the advertisements of the company, that they have at least three refineries?—A. Yes, sir.

Mr. MORRISON. He has already said that. What is the use of repeating it?

Mr. CRAWFORD. Well, we like to make it clear. You have taken a great deal of time with this witness and gone into great detail. You can not complain if I take a little time, too, Mr. Morrison.

Q. (Handing a paper to the witness.) I show you an advertisement and ask you if you recognize that as an advertisement of your company?—A. I have never seen anything like this before.

Q. Do you doubt that it is an advertisement of your company?—A. I don't know. I have never seen it before. I have never seen anything like that. I have never seen those four refineries
13761 there on any of ours.

Q. Where is the chief office of the Crew-Levick Company?—A. Land Title Building, Philadelphia.

Q. Do you know whether the Crew-Levick Company does business in Philadelphia?—A. I don't think in Philadelphia proper. In the outskirts they do.

Q. They do in or near Philadelphia, don't they?—A. Yes.

Q. Do they also do business in New York?—A. I don't know about New York.

Q. How about Boston?—A. I couldn't tell you, sir.

Q. Now, you said, yesterday, that they did business generally through the United States. Mention some other places in the United States where they do business.—A. I can only go by our letter heads; that is what I took it from.

Q. Have you a letter head with you?—A. I am just feeling for it. That is what I am hunting for now. [After looking through a bunch of papers.] I have not. I have got something here [indicating].

Q. What is that which you have in your hand?—A. (Referring to a booklet.) New York, Chicago, Baltimore, Boston, Savannah, Jersey City, Newark, Liverpool, Hamburg, Brussels, Yokohama——

Q. Those places that you have read are what?—A. It says here "principal branches."

Q. What are you reading from?—A. A little book.

Q. What is the little book?—A. A little pamphlet.

Q. Published by your company?—A. Some years ago; yes, sir.

Q. May I look at it?—A. Certainly [handing the booklet to Mr. Crawford].

13762 Q. I see by this pamphlet, which reads, on the title-page "Crew Levick Company, 113 Arch Street, Philadelphia,"

that the company was established in 1862. You understand that to be correct, do you?—A. I don't know anything about it. I guess you know more about it than I do.

Q. At any rate, it so states, does it not—that it was established in 1862?—A. Oh, yes, it so states there.

Q. And the Seaboard Oil Works, to which I referred, are here stated to be situated at Chester, on the Delaware River, are they not?—A. Yes, sir.

Q. Now, do you find also in this little book this statement: "We produce fro moil lands which we own the richest of Pennsylvania crude petroleum" [pointing in the booklet]?—A. I have seen that, sir.

Q. That is in the book, is it?—A. Yes, sir.

Q. And do you find this statement in this book (published by the Crew-Levick Company): "This oil is conveyed to our refineries through our own pipe lines?"—A. I have seen that in there; yes, sir.

Q. That is in that book, isn't it?—A. I have seen that; yes.

Q. Then it is a fact, is it not, that the Crew-Levick Company has pipe lines?—A. I don't know.

Q. Well, at any rate——A. It is in there; yes [indicating].

Q. ——they so state in this book, which is an advertisement——A. Yes, sure.

Q. ——published by them——A. Yes, that is what they say.

Q. ——and circulated among the trade, isn't it?—A. Oh, no, this was only given out to a few friends.

13763 Q. Well, it was given out to some customers, was it not?—A. It was given to some customers; yes.

Q. So that if these statements are correct, the Crew-Levick Company has pipe lines, and has at least three refineries, and has marketing stations in a number of different cities in this country?—A. Yes, sir.

Q. And also has a number of offices in foreign countries——A. Yes, sir.

Q. ——if the statements in this book are correct.—A. That is a perpetual calendar; that is all it is [referring to the booklet].

Q. You find this statement in this book published by the Crew-Levick Company: "We have contracts with and are selling many railway, mining, electric, and manufacturing plants located in nearly all parts of the world?" You find that statement there, do you [showing the book to the witness]?—A. Yes, sir. Paper is easy. You often put something on paper.

Q. Yes, but those are statements made in this pamphlet published and distributed by the Crew-Levick Company?—A. There weren't any more than about five hundred of those given out, all told.

Q. And those five hundred were distributed, were they?—A. I received twenty. Each station was sent a few.

Q. Yes, but they were distributed among certain customers?—A. I gave them to a few.

Q. And the others were distributed, you suppose, in the same way?—A. I suppose in the same manner.

Q. Do you also find in this book a statement that they have tank-wagon stations for the distribution of illuminating oils in the following cities: Philadelphia, New York, Brooklyn,
13764 Jersey City, Baltimore, Chicago; Chester, Pa.; Camden, N. J.; West Chester, Pa.; Mt. Holly, N. J.; Warren, Pa.; Newark, N. J.; Lancaster, Pa.; Trenton, N. J.; Dover, Del.; Reading, Pa.; Downingtown, Pa.; Wilmington, Del.? If you want to have them again, the stenographer can read them back to you—if you want to be sure.—A. No, that is right; that is about what is in here [referring to the booklet].

Q. You do find them there, do you?—A. Yes.

Q. And you also find that the following places are named as being the principal branch offices: New York City, Chicago—you may look at it as I read it, if you wish—Baltimore, Boston, Savannah, Jersey City, Newark, Houghton (Mich.), Liverpool, London, Paris, Lyons, Hamburg, Frankfort-on-the-Main—"Frankfort O. M.;" I suppose that means "on-the-Main"—Brussels, Calcutta, Tokio, Yokohama, Kobe. You find all those there, do you, mentioned in this book as the principal branch offices of the Crew-Levick Company?—A. Yes.

Q. When was this book gotten out, if you remember?—A. I think it was somewhere around three years ago. It was a little Christmas token.

Q. So it would appear from this book that this company is doing business on quite a large scale, not merely in the United States and in Europe, but also in India and in Japan. Isn't that so?—A. Yes, sir.

Q. When you went with the Crew-Levick Company in Baltimore—which I think you said was in January, 1902—how many tank wagons were in service there?—A. Five.

Q. How many are in service there now?—A. Six.

Q. When was the sixth wagon added?—A. The sixth wagon was added in 1904, about September, I think. I think it was September, 1904.

Q. And continued throughout 1905?—A. Yes, sir.

13765 Q. September, 1904; that was about the time when you testified that you and Blaustein were having a fight?—A. Yes. I will tell you where the extra wagon came from.

Q. Never mind that. I didn't ask you for that. But you added the extra wagon in your business and kept it on thereafter, did you?—A. Yes.

Q. How many customers did the Crew-Levick Company serve in 1904, at the beginning of 1904, if you please, in the city of Baltimore?—A. You are asking something now that I couldn't tell you. I never counted the customers that we have got.

Q. You became manager of that department in April, I think you said, 1904, or May. Was it April or May?—A. April.

Q. April, 1904. As manager you must have known how many customers you had.—A. I never counted them.

Q. How long were you manager?—A. I am still.

Q. You are still manager?—A. Yes, sir.

Q. Well, as such, you have had access to the books?—A. Certainly.

Q. And you have examined them, I suppose, frequently?—A. Only the accounts at the end of the month.

Q. You know the trade, I suppose, don't you?—A. Yes, sir.

Q. Do you mean to say you don't know how many customers you have now in the city of Baltimore?—A. I certainly don't; I never counted them.

Q. Have you 100 customers?—A. More than that.

Q. Have you 500 customers?—A. No.

Q. Not so many as 500. Have you ever had as many as
13766 500?—A. No.

Q. Well, have you 400 customers?—A. No. I guess if you make it 300 you will come close to it.

Q. You say that you haven't more than 300 customers?—A. I hardly think so.

Q. And that you never have had more than 300 customers?—A. I don't think we did.

Q. How much illuminating oil do you sell a week in Baltimore?—A. Well, it varies.

Q. About?—A. It depends on the weather a great deal.

Q. Well, what is the greatest amount you ever sell?—A. The greatest amount I ever sold in Baltimore? About 20,000.

Q. 20,000 gallons in a week?—A. Yes, sir.

Q. So that that would mean, if you only had 300 customers, that each customer was buying about 65 gallons a week, wouldn't it? If 300 customers were buying 20,000 gallons, each customer was buying 65 gallons a week?—A. That is about it.

Q. Do you mean your customers averaged in buying as much as that?—A. Some take less; some take more.

Q. Have you more customers now than you had when you became manager of the station?—A. Yes, sir.

Q. A great many more, haven't you?—A. Yes, sir.

Q. You have had a pretty steady increase, haven't you?—A. Not now any more.

Q. What?—A. Not now.

Q. From 1904 down until recently you had a pretty steady increase, haven't you?—A. Yes, sir. The day I took charge I
13767 only sold 400 gallons, and that was all my own.

Q. You mean 400 gallons a week?—A. No, sir; 400 gallons that day.

Q. That would be how much a week?—A. The five wagons only sold the first day 400 gallons.

Q. And that would be about 2,000 gallons a week?—A. Yes.

Q. And now you sell about 20,000 gallons a week?—A. Yes, sir. You had all our drivers then.

Q. Wait a moment. Now, I want you to tell me something about these prices. You testified that in the early part of 1904 the prices at Baltimore declined. The percentage got down to a point where the Standard was selling illuminating oil at 8 cents a gallon, the Crew-Levick Company was selling it at 7 cents a gallon, and the Eagle Company at 6 cents a gallon. That was correct, wasn't it?—A. Yes, sir.

Q. How long did those prices continue at those figures?—A. Up to about October.

Q. Didn't they go a little further than October? Didn't they go, as a matter of fact, to December, 1904?—A. (Referring to memorandum.) In October it advanced to 8½ cents.

Q. What have you in your hand?—A. A list of our prices at the time.

Q. Where did that list come from?—A. From my office.

Q. Did you make it up?—A. I had it made up.

Q. Will you let me see it?

(Witness hands paper to Mr. Crawford.)

Q. You stated that these prices about which I have just
13768 asked you—that is, 8 cents on the part of the Standard, 7 on the part of your company, and 6 on the part of the Eagle—began in the early part of May. That was your testimony, I believe?—A. No, the trouble started——

Q. I didn't ask you about the trouble; I asked you how early in the year do you fix the time when the prices had reached those figures?—A. I did not state that we were selling at 7 cents in May. The trouble began in May. Prices gradually declined. The price came down from 9½ to 9, and from 9 to 8½.

Q. Whose prices are you speaking of now?—A. Mr. Blaustein's prices and ours.

Q. And the Standard's prices came down more slowly, as I understand, keeping about a cent above yours?—A. A cent above us.

Q. So that from some time early in 1904 your prices were in between those of the Standard and the Eagle?—A. In between the two.

Q. And that continued all the way through the year 1904?—A. Up to October.

Q. Up to October. And during all of that time you say that whereas the Eagle was a little under you, you were a little under the Standard?—A. Yes, sir.

Q. You were asked in regard to a dealer named Thomas Shields. He was a customer of the Standard whom you took away from the Standard, was he not?—A. Yes, sir.

Q. When was that?—A. He was taken away first in the year of 1903 by a man whose name I think was Eaton, if I am not mistaken.

Q. I refer to the time when you took him away from the Standard?—A. No; I took him from Blaustein.

13769 Q. You testified that you took him from the Standard. You testified as follows: "Q. Mr. Robinson names also Thomas Shields as one of the persons to whom you made a special

rate and a cut; is that so? A. No, sir. I took him away from the Standard. Q. When did you take him from the Standard? A. In 1904."—A. Well, we had dealings with that man before that—that is, in 1904, I took him again, yes.

Q. In 1904 you took him from the Standard, didn't you?—A. Yes, sir.

Q. Now, that is what I am talking about. My information is that was in May, 1904. Would that be your recollection—about May 12, 1904?—A. No, it wasn't in May. I think it was later on. You might be right. I think you are right. It was in May.

Q. You think I am right, that it was in May, 1904?—A. I think it was.

Q. That you took Shields away from the Standard?—A. Yes.

Q. Now, you were asked in regard to a man named T. F. Bowen, a storekeeper, and you stated that he had previously been the Standard's customer. I am speaking now about 1904. When, in 1904, did you take Bowen from the Standard?—A. That must have been somewhere around—I think it was through July—June or July, somewhere around there.

Q. Wasn't it in May? My date here is May 27, 1904. Would you say that was about right?—A. I don't think it was that early. I think it was a little later than that.

Q. Well, not later than June, would you say? What is your best recollection on that?—A. I think it was in July. I think we
13770 had hot weather.

Q. Very well, we will call it July. Now, how about a man named Whaley? Do you recollect a man named Whaley? You testified to the same effect about him, I think. He had been dealing with the Standard, and you got his trade. Now, when would you say that you got Whaley as a customer? My date for that is May 27, 1904. Would that be about right?—A. I don't think it is.

Q. Well, where would you place it; I mean what time in 1904?—A. I don't think it was in 1904; it seems to me it was in 1905.

Q. Well, do you swear that it was?—A. No, I will not.

Q. You will not swear that it was in 1904. Will you swear that it was not in May, 1904, that you took him away from the Standard?—A. I won't.

Q. You will not swear?—A. No.

Q. You will not swear that it was not in May, 1904, that you took Whaley away from the Standard?—A. No; I don't recollect just exactly what time.

Q. Now, there was a man named Danzeglock referred to, whom you said had been a customer of the Standard, and whose trade you got. When did you get him away from the Standard?—A. That was in 1904, the summer of 1904.

Q. Wasn't it in May, 1904?—A. Well, now, you are not going to pin me down to a date, because there was so many. I saw twenty

or thirty people a day, and you cannot expect me to remember the day and each and every man, and what hour, and what day I went there.

Q. You don't remember?—A. I may have been there a half a dozen times before I landed him.

13771 Q. You don't remember definitely the date in regard to any of these people?—A. I could not. I could not say so. I wouldn't sit here under oath and tell you a certain day when I am not positive of it.

Q. You will not swear, therefore, that Danzeglock was not taken away from you by the Standard in May, 1904?—A. I won't swear to that, no.

Q. But you said that you think it was in the summer of 1904?—A. I think it was in the summer.

Q. What about a man named S. Lowenthal?

The EXAMINER. We will take a recess until 2 o'clock.

(A recess was here taken until 2 o'clock p. m.)

13772 (Question read.)

Q. Just answer that. You stated that he was a Standard customer whom the Crew-Levick Company got away from the Standard. When was that; I mean what time in 1904?—A. No, it was 1905, to the best of my recollection, either during the winter season or—no, I think it was in the spring season, during the spring of the year of 1905, to the best of my recollection.

Q. What business was Lowenthal in—what particular line of business?—A. Well, he is mainly selling glassware, stoves, etc., crockeryware, chinaware.

Q. Groceries?—A. No; no groceries at all; china.

Q. Didn't he run a peddling wagon—an oil peddling wagon?—A. No.

Q. Are you sure you have got the right man?—A. Yes.

Q. Where did this man——A. On West Baltimore street. He sells a little—for instance he will take an order for five gallons or two gallons, from a customer, and deliver that. If you consider that a peddler, why, of course, he is.

Q. You testified about a man named C. Schroeder who had formerly been a Standard customer, whom you got away in 1904. What time in 1904 was that? I say 1904. I so understood you.—A. I didn't bind myself to any of those——

Q. No, you didn't say 1904. I was mistaken about that, but I understood you so. Whatever you said, what was the time?—A. I couldn't tell you. It is impossible for me from memory to state what time it was.

13773 Q. Our records show that it was May 31, 1904. Would that be about your recollection?—A. That may be.

Q. That may be so?—A. I couldn't positively say that.

Q. Well, it was in the summer.—A. I know I got him; that is all I can tell you; but exactly what time, I couldn't tell you that.

Q. Not later than the summer of 1904, was it?—A. I wouldn't like to say that.

Q. You wouldn't say that it was, anyway?—A. No, I won't say it was or I won't say it wasn't.

Q. Do you know a man by the name of Kontz, D. E. Kontz?—A. Kontz?

Q. He was a customer of the Standard Oil, wasn't he?—A. Yes.

Q. Before Crew-Levick got him?—A. I think he was.

Q. When was it that Crew-Levick got him from the Standard; what part of 1904?—A. I got, during 1904, 1905, and 1906, customers that I held for a little while and lost them again. There was a constant change. One day you had them; the next day they were gone. It is utterly impossible for me to keep that in my mind. Of course my books would show it.

Q. You don't know, then, when you took Kontz away?—A. I couldn't positively state what time.

Q. You recollect that you did take him away?—A. Oh, yes, I took him away.

Q. But you don't know when?—A. No.

Q. And you don't know whether it was 1904, 1905, or 1906?—A. I couldn't state.

Q. You can not tell within three years when it was?—A. It may have been in 1904 and may have been in 1905.

13774 Q. And might have been in 1906?—A. And might have been in 1906.

Q. You can't tell certainly within two years when it was?—A. No. I couldn't say that.

Q. Then how can you tell that you didn't make him any concession or cut?—A. A man that I make concessions to——

Q. Now wait a minute. Answer me.

Mr. MORRISON. He is answering you.

Q. How do you know that you didn't make him a concession or cut if you can not tell within two years when you got him?—A. A man I make concessions to—if you will allow me to explain it to you I will.

Q. Go on.—A. I had to see frequently; in other words, once a month; whereas, a man that I merely took away I would see him at his place of business, turn it over to the driver, and I would probably not go near that man any more for nearly six or seven months, as long as he continued to buy. If he left, then I went to see him and asked him why he had left.

Q. Do you recollect the occasion why you got Kontz from the Standard?—A. I can't say that I do.

Q. Then you do not recollect in connection with any particular occasion whether you did or did not give a cut or a concession to Kontz, do you?—A. No.

Q. There is a man named William Peil. You say that you don't know that man?—A. No.

Q. You don't know, therefore, whether he was a Standard customer or not?—A. No.

Q. You have no recollection of taking him away from the
13775 Standard?—A. No.

Q. You won't swear that you didn't, will you?—A. No, I won't.

Q. What about the Consumers Meat Company? Do you recollect that concern?—A. Yes. He always was a part customer of ours. The driver got him, if I am not mistaken.

Q. Do you know a Mrs. Grim? You were asked about Mrs. Grim, 401 Paris street. She was a Standard customer whom you took away, or whom the Crew-Levick Company took away.—A. Crew-Levick took away.

Q. When was that?—A. I will have to give you the same answer. That may have been in 1904; it may have been in 1903; I couldn't——

Q. It might have been in 1903 and it might have been in 1905?—A. It might have been in 1905.

Q. And it might have been in 1906?—A. Yes.

Q. You can not tell in that case within three years when you took her?—A. I could not positively say.

Q. Not within three years?—A. I wouldn't tie myself down to that particular point.

Q. Not within three years?—A. No.

Q. Then you don't, as a matter of fact, remember the occasion when you got Mrs. Grim at all, do you?—A. I remember what the——

Q. No, but do you remember the occasion when you got Mrs. Grim away from the Standard?—A. No, I can not say that I do remember it. I don't think I have seen Mrs. Grim for four
13776 years, to my knowledge, to have any conversation with her.

Q. You were asked about a man named Russell, whom you say you took away from the Standard Oil Company. When was that?—A. I think that was in 1904.

Q. That was in 1904; about the summer of 1904; about June or early in the summer of 1904?—A. It was 1905. 1905 that was.

Q. What time in 1905?—A. I think it was in the spring of 1905 or summer of 1905; I wouldn't say positively about that.

Q. Are you sure about that?—A. Yes; it was 1905.

Q. Quite sure of it. Will you swear it wasn't in 1904?—A. Well, it wasn't in 1904.

Q. What makes you so sure of that when you can not tell the dates of any of these others?—A. Because I had so many transactions with him and had been up to see him so often. I got him away. That is, we had him and we lost him and I got him back again. That is how I know—I have been there so often.

Q. When did you first get him for a customer? When did Crew-Levick & Company first sell him?—A. To the best of my recollection it was in 1905.

Q. You would swear that Crew-Levick Company did not sell him before 1905? Our records show that you sold him in June, 1904. Will you swear that you did not—or about that time?—A. I didn't sell him in 1904.

Q. Well, what about this man Gordon? When was it that you took him away from the Standard?—A. I couldn't tell you. I don't think I have seen Mr. Gordon more than once or twice.

13777 Q. Well, was it in 1903?—A. I couldn't tell you. Not in 1903, I know that.

Q. Was it in 1904?—A. It may have been in 1904 or 1905.

Q. Was it in 1906?—A. No; I think it was earlier than that.

Q. It was either 1904 or 1905. Now, don't you know it was in 1904?—A. No; I do not.

Q. Will you swear that it was not in the summer of 1904, or as early as that?—A. I will not swear to anything that I am not positive of.

Q. You will not swear it was in the summer of 1904?—A. You can not make me say anything I don't know.

Q. Answer my question. Will you or will you not swear that this was or was not in the summer of 1904?—A. I will not swear to it.

Q. You testified in regard to a man named Lavies—that you sold him. Had he been a Standard customer?—A. Yes; he was formerly a Standard customer.

Q. And you took him away, did you?—A. Yes.

Q. When was that?—A. Either in 1904 or 1905.

Q. Don't you know that it was in 1904?—A. No; I can not say positively it was.

Q. Will you swear it was not in the summer of 1904 or before that?—A. I will not.

Q. You are just as uncertain about that date as about all the dates that you testified to since recess, are you?—A. As far as those cases, because I did not have time at all to look this matter up—the whole case was brought on me so sudden.

Q. How is it that before recess you knew the dates in regard
13778 to all the men I asked you about, and since recess you don't know any of them?—A. I didn't know the dates.

Q. Excuse me. You testified before recess to every man I asked you about, I think—certainly as to most of them—quite closely as to the dates in the year 1904. Now I want to know why it is that since recess your memory has become so defective?—A. I stated before recess that those customers—I answered the questions on direct examination.

Q. No; never mind direct examination.—A. I say that they had not received any rebates from me. I did not bind myself down to any time.

Q. That is not answering my question. You did give definite dates for all the customers. You did give definite dates to all the customers before recess. Now, I want to know why you cannot give them since recess.—A. I did not give any definite dates before recess.

Q. Let us see about that, and see how far you are willing to go in contradicting yourself. Didn't you tell me before recess that your transaction with Bowen, T. F. Bowen, was as early as July, 1904? Now, I am asking you what you testified to this morning.—A. July, 1904?

Q. Didn't you so testify?—A. Bowen? Yes.

Q. You did so testify. All right. Didn't you testify before recess as to Whaley—that you got him away from the Standard in the summer of 1904?—A. Whaley? Yes.

Q. Didn't you testify as to Danzeglock, before recess, that you got him away from the Standard in the summer, or as early as the summer of 1904? Now I want to know what you said this
13779 morning. Didn't you so testify?—A. I testified before that——

Q. Didn't you testify before recess that you took Danzeglock away?—A. Somewhere around that time.

Q. In the summer of 1904?—A. I didn't say positively.

Q. You said about the summer of 1904?—A. You tried to tie me down before dinner and I wouldn't take it.

Q. Didn't you say it was about the summer of 1904?—A. It is about; yes.

Q. Did you not testify as to Thomas Shields, that you took him away from the Standard in the summer of 1904, or earlier than that? Did you not testify in regard to Thomas Shields that you took him from the Standard in 1904?—A. Yes; I think it was in 1904.

Q. And you so testified, didn't you?

(No response.)

Q. Now, when the Crew-Levick Company got this dealer named Lavies, if that is the name—is it Lavies or Labies?—A. Lavies

Q. L-a-v-i-e-s?—A. "z."

Q. Do you spell it with a "v"—L-a-v-i-e-s?—A. I think he spells it with a "z." You may be right.

Q. I have no information——A. I think it is "L-a-v-i-z;" I think that is the way he spells his name.

Q. Is he on Columbia avenue, about 774?—A. Yes; right near Scott street.

Q. At the time the Crew-Levick Company got him away did you go to Lavies and solicit his business?—A. No; I don't think I went there myself at all. I think it was the driver got it.

13780 Q. Now, as to all these customers formerly of the Standard, whom you got away, I understand you to say that in each instance you sold to them at the price which the Crew Levick Company was at that time selling to the trade?—A. Yes, sir; excepting three.

Q. Excepting those three?—A. Yes, sir.

Q. Otherwise than that you sold at the price which the Crew-Levick Company was charging the other people?—A. To these parties; yes.

Q. How long did you drive a tank wagon for the Crew-Levick Company before you became manager?—A. Two years and three months.

Q. Are you sure it wasn't one year and three months?—A. Two years and three months.

Q. You are sure that you went there in 1902, are you?—A. Yes, sir.

Q. Not in 1903?—A. Yes, sir.

Q. How is it you are so sure about that date and you cannot tell any of these other dates?—A. I looked up the records.

Q. You didn't look up the records in regard to any of these customers whom you got from the Standard, then?—A. I didn't have an opportunity. I was hustled over here in such a hurry I didn't have any chance to look it up.

Q. You stated that Mr. Blaustein represented the Eagle Oil Company to the trade to be an independent oil company. Did you ever hear him make the statement to any one that it was an independent oil company?—A. Yes; he told me himself.

13781 Q. No; did you ever hear him make the statement to any one else that it was an independent oil company?—A. Yes; in arguments before a customer.

Q. How many such instances?—A. Well, I guess it was two or three instances that I——

Q. Two or three instances that you heard him say that——A. Yes.

Q. What was it he said?—A. He said he was an independent man. I cannot tell you word for word.

Q. Now, with the exceptions of two or three instances, all you know about that is what the trade told you, isn't it?—A. Of course.

Q. You made it your business to tell the trade generally that he was connected with the Standard, did you not?—A. Yes, sir.

Q. You went pretty well all over Baltimore and told that, didn't you?—A. Yes, sir.

Q. When did you begin to do that? As soon as you went into the business?—A. Yes, sir.

Q. That was in 1902?—A. Yes, sir.

Q. And within a few months I suppose you had gone pretty well all over the whole city of Baltimore with that story?—A. Oh, no, no. In 1902 and 1903 I was only in East Baltimore, confined in the territory between the falls, the river, and I went up as far as my house to dinner. I had no customers, only just in that one section.

Q. Within that territory that you have described, whatever it was—no doubt you have described it correctly—in 1902 and 1903 you saw to it that everybody was told that he was connected with the Standard, didn't you?—A. Certainly.

13782 Q. In 1904, when your hozizon was broadened, you told everybody else that you could reach, didn't you?—A. Certainly I did.

Q. So that there is not any doubt that by the end of 1904, or by September of 1904, everybody in Baltimore had been told that he was a Standard man?—A. Oh, yes; I guess they did. Everybody knew it.

Q. You guess everybody knew it?—A. I guess everybody knew it. Some of them didn't pay any attention to it, but they all knew it.

Q. But they all knew it as early as 1904. Now, in 1904, in your own trade; that is, your own regular customers, did you make them any concession from your regular market price?—A. No.

Q. Not to any of them?—A. No, sir.

Q. You are quite sure of that, are you?—A. Yes, sir.

Q. Didn't you pay back a rebate to them on the price at the end of the month?—A. No. The price was so low then that we couldn't

Q. Never mind that. Did you or did you not pay back to some of your customers a rebate at the end of the month, in 1904?—A. What part of 1904, sir?

Q. Any part of it.—A. Oh, yes; the latter part I did.

Q. In the latter part you did?—A. Certainly I did.

Q. How much of the year 1904?—A. About two months.

Q. About two months of the year 1904?—A. I guess it lasted close on to three months.

13783 Q. How generally did you do that to your own trade?—A. Pretty much all the way through my trade. I was carrying out the agreement that I made with them in the summer when I stated that if they would pay me then 7 cents that later on when the price advanced I would allow them the same reduction—the Eagle reduction that they could then get from Mr. Blaustein—if they would buy from me and pay me the regular price.

Q. You did make them a secret rate then?—A. Certainly: I had to be as good as my word afterwards.

Q. Whatever your price was at the time, you put the full price on the tickets and charged them a half a cent or a cent less?—A. Certainly, at that time I did.

Q. And that you paid back to them at the end of the month, did you? And that was generally done with all your trade?—A. That was done in the latter part of 1904, after the first fight was over.

Q. And continued into 1905, didn't it?—A. No, sir; 1905 was a different fight again.

Q. At any rate it lasted for three months in 1904?—A. Yes.

Q. That you were paying these secret monthly rebates to all your trade?—A. Yes, sir.

Q. Then your price tickets for that period do not disclose the real price at which you sold the oil to your own trade?—A. Not at that time. The fight was over.

Q. Not during those three months?—A. I couldn't let you people know what I was doing then.

Q. But they don't during those three months show the real price at which you did business?—A. No; they do not.

13784 Q. Then your statement that there were only three customers to whom you made a secret arrangement meant three customers outside of your own trade?—A. No; that was in 1905—yes; outside of my own customers.

Q. In 1905 how many people among your own customers did you make a secret arrangement with, or rebate?—A. There weren't any in 1905.

Q. Will you swear there were none? Don't shake your head; say yes or no.—A. Now, allow me. Do you mean that the market price was one and a cut below that?

Q. I mean a cut below your regular price.—A. There was. In 1905 there was a fight again. The beginning of 1905 Mr. Blaustein went around to my trade and offered it a half a cent less. I made the cut.

Q. Did you make it openly or did you make it by a secret rebate?—A. Openly. The ticket was made out in the regular price, the tank wagon price, but the half cent was deducted right there and then. The driver made out his report in the office at exactly the price that he had received on the street.

Q. And how long did that last?—A. Well, that lasted pretty much throughout the entire year of 1905.

Q. So that during 1905 you were really selling to your own trade at a half a cent below the apparent price on your tickets?—A. Certainly; meeting the cut of Mr. Blaustein.

Q. Well, you did it, anyway?—A. Certainly; yes, sir.

Q. How do you know Mr. Blaustein made the offer of a half a cent before you began to make that cut?—A. How do I know?

Q. Yes.—A. When customers leave you——

Q. How is that, sir?—A. I say, when a customer leaves
13785 you and he tells you that he is getting a better price, you naturally go to work and say "Well?"——

Q. Well, never mind what you do. I want your knowledge now. We will talk about what you did, afterwards.—A. From information of the customer.

Q. And that is all—what your customers told you?—A. What they told me, of course.

Q. Now, isn't it true as to all the other statements that you have made on your direct examination as to what was the cut made by Mr. Blaustein, or the Eagle Oil Works—is that the name?—A. Yes.

Q. —— that you got your information from customers?—A. Yes, sir.

Q. You based your conclusion entirely upon the information they gave you?—A. Certainly.

Q. And that is all the information and all the knowledge you had, isn't it?—A. With the exception of when I ran across Mr. Blaustein in different stores where he was doing it.

Q. You say you found him in stores in some instances?—A. Yes, sir.

Q. What instances did you find him in stores, do you remember? In connection with what reductions, or what time?—A. With P. C. Miller one time. He was giving Mr.——

Q. When was that?—A. That was in 1905. I think it was in the summer of 1905.

Q. In the summer of 1905, in P. C. Miller's store. Well, what other instance did you see Mr. Blaustein?—A. Mr. Miller was
13786 then getting a half a cent, and I told Mr. Miller he wasn't in it; I would give him three-quarters if he would come over to me, and Mr. Blaustein would give him still more. And he got it, too; he got a cent.

Q. What other instance was there where you saw Mr. Blaustein in the store?—A. I have seen him in numbers of stores. I could not just recall the different names and places where it was.

Q. Can you name any other one?—A. Yes. I met him in Surrendorf's.

Q. When was that?—A. That was in 1905.

Q. What time in 1905?—A. That may have been in the summer; it may have been in the spring.

Q. Well, what other place did you ever see him in?—A. I saw him in Sause's.

Q. What happened in Sause's on that occasion?—A. He was there talking, started to argue with me, but as a rule he ran out when I came.

Q. Never mind "as a rule." You say he was arguing. What was said?—A. Well, that he was an independent man, and accusing us of doing all kinds of things. He would throw everything on us.

Q. Was that all that was said at that time?—A. That is about all. In a general way he would accuse us of doing wrong.

Q. On these other two occasions, when you saw him at these other two stores, what conversation was there that you recollect?—A. He would go into the store and tell them "What do you want to buy from the Crew-Levick Company for? They are selling oil to such and such parties for so much;" and he would try to get them to go along, and in some instances he did.

13787 Q. Did you hear him say that?—A. I overheard him on one occasion.

Q. What occasion was that?—A. I think that was in Sause's, if I am not mistaken.

Q. You heard him say that there. On these other occasions did you hear him say anything about price at all?—A. No.

Q. You were told that afterwards by the customer?—A. Yes. Some of the drivers came to me and made the report.

Q. Now, was there any other occasion that you can now recall when you heard Mr. Blaustein say to a customer anything about reduction in the price except that one time at Serrendorf's?—A. No; I cannot say.

Q. Now, I am talking about you personally.—A. No; I cannot say that.

Q. That is the only time; and all the other times you got your information from customers or from drivers or from both, did you?—A. Yes.

Q. And is that true generally of all the testimony that you have given in regard to cut prices said to have been made by Mr. Blaustein or by the Eagle Oil Works—with that one exception—that you got your information from customers or drivers or both?—A. There was no other way of getting it.

13788 Q. Well, is that true—that you got it all from those two sources, except that one time?—A. Certainly.

Q. And that is all the knowledge you had?—A. Certainly.

Q. Now, you were asked concerning some period in 1904—the summer, I judge, of 1904, or between May and October, 1904—about what trade Mr. Blaustein went to, and whose customers he solicited, and you said the customers of the Crew-Levick Company, and then further added that he did not solicit the customers of the Standard Oil Company.—A. I never seen him in with the customers of the Standard Oil Company until after I went there, and then he came.

Q. But you cannot swear, can you, that he didn't go to Standard Oil Company's customers when you were not around?—A. No; certainly not.

Q. You say you never saw him go to any Standard Oil customers, and, of course, that means that when you were present you didn't; but you don't know that he didn't when you were not there?—A. Oh, no; I can't say what he did when I was not there.

Q. Do you know about how many customers the Standard had at that time?—A. I have no idea.

Q. Didn't they have about 4,000?—A. I have no idea. I don't have spies on the street like the Standard Oil Company does, following our wagons up.

Q. You know they had about 4,000 customers, don't you?—A. I have no idea.

Q. They have a very large number, don't they?—A. I have no idea.

Q. Do you know whether they had as many as 300 or not?—

13789 A. Oh, they had more than 300.

Q. Do you know whether they had as many as the Crew-Levick or not?—A. Oh, they had more than the Crew-Levick.

Q. They had more than the Crew-Levick?—A. Yes; more than the Crew-Levick and all the others combined.

Q. So you do know something about the number?—A. I can't tell you about the exact numbers. I know in a general business way.

Q. Well, about how many?—A. I couldn't tell you any numbers.

Q. You can't tell anything about it?—A. Certainly not.

Q. But you are sure it was a great many more than the Crew-Levick?—A. Oh, yes. They have double the amount of wagons running that the Crew-Levick have. They must have more business. They are not running wagons for glory.

Q. You have been in business there for four years, and you have no idea or no further information about the size of the business of the Standard Oil Company?—A. No, sir.

Q. You were asked to-day in regard to a man named Pumpier, and you stated, as I got you down, that you took him away from the Standard in 1906 by cutting the price. That is correct, is it?—A. Yes, sir.

Q. What other customers did you take away from the Standard in 1906 by cutting the prices?—A. There wasn't anyone in 1906 outside of Pumpier.

Q. Are you quite sure?—A. Yes.

Q. You made him a secret cut, did you?—A. Yes, sir.

Q. By way of rebate?—A. Yes, sir.

Q. Was it paid at the end of the month or paid at the time
13790 he took the oil?—A. Paid at the end of the month.

Q. And you said, in that same connection, that in 1902 Blaustein had made a cut to get Pumpier. You know that, I suppose, because you were told by Pumpier?—A. Yes.

Q. You didn't get it any other way than that?—A. No.

Q. Now, in regard to a man named Horwitz, you stated some transaction. What was it? Tell us that again, about Horwitz in 1906.—A. Horwitz called me up and wanted to know if I could supply him with oil at a lower price. I told him I couldn't at a lower price than he could get from the Standard; that he could get it from Blaustein.

Q. Do you mean lower than he could get it from Blaustein?—A. Not from me lower than the Standard, but that he could get it lower than the Standard from Blaustein.

Q. You mean to say, then, that you were going to give it to him lower than the Standard?—A. Oh, no, sir.

Q. Oh, Blaustein. When was this? In 1906, but at what time; do you know?—A. I couldn't tell you what time. I really think it was in 1905, if I am not mistaken. It is a hard thing to keep all those in my memory—exactly when it happened; it is utterly impossible. I know the transaction, because I sent a wagon up there on Friday night and filled his tank.

Q. That was while Blaustein was with the Eagle, was it?—A. Yes, sir.

Q. Didn't you testify this morning that this took place in April, 1906?—A. I don't think that I confined myself to any time.

Q. If record shows that you did say so, then it was true,
13791 wasn't it?—No, I couldn't say it is true, because I really can't say that I—as far as I can remember just now, I really think it was in 1905.

Q. If the record shows that you said, this morning, April, 1906, then it was not true?—A. Then I must have been wrong in making that statement this morning. I don't remember making it, either.

Q. So now you are quite sure that this transaction with Horwitz was not in 1906, are you?—A. Oh, no; don't you tie me to anything like that now. Don't you do nothing like that, because I will not

have it. I told you distinctly that I didn't confine myself to any time.

Q. No; I know you didn't. You are a free lance, I understand, on dates.—A. If my memory is good—if I know, then I say so; but if my memory is not clear, I can't say it.

Q. Are you sure it was not in 1906?—A. No; I am not sure.

Q. Are you sure that it was in 1905?—A. I am not sure it was in 1905; but it was somewhere around that neighborhood.

Q. Yes. It may have been in 1906, may it?—A. It may; and it may have been in 1905.

Q. And it may have been in 1907?—A. No; it was earlier than that.

Q. But it may have been in 1906?—A. It may have been, and it may have been in 1905.

Q. And it may have been as late as April, 1906, may it?—A. Maybe. I wouldn't tie myself down to that.

Q. No; but it may have been as late as April, 1906?—A. It may have been.

Q. Now, in connection with Mr. Berkow, of 1020 Pennsyl-
13792 vania avenue, I think you said something about a driver of the Standard coming over to you at that time. That is correct, is it?—A. Yes, sir.

Q. Who was the driver?—A. Andy—I have the name on the end of my tongue, but I can't remember it.

The EXAMINER. If you can't remember, say so.

Q. You can't remember?—A. His first name is Andy. I don't remember the last just at present.

Q. Andrew. Is he still in your employ?—A. Yes, sir.

Q. Has he been in your employ ever since?—A. Yes, sir.

Q. And you can't remember his last name?—A. I can't think of it just now, to save my neck.

Q. Have you paid him his wages during that period?—A. Yes, sir.

Q. Do you make out the pay roll?—A. Yes, sir. He signs a voucher. He signs a voucher every time.

Q. You don't remember what his name is?—A. I guess that has happened to you before—that you have got it on the end of your tongue and you can't get it out. It will come to my mind in a minute.

Q. When he came over from the Standard he brought with him a good deal of business, didn't he?—A. Yes; about 75 per cent of it, I expect.

Q. About 75 per cent of what he had been selling?—A. Of what he had been selling for the Standard.

Q. How much had he been selling—how many customers?—A. I never counted his customers.

Q. Well, about?—A. About 30, I guess; maybe 40; I don't know.

Q. Well, you think he brought you 30 of the Standard's
13793 customers?—A. Oh, yes; I guess he did, 30.

Q. Or more. And then you continued to serve them, after that, did you?—A. Yes, sir.

Q. And you have them still?—A. Some of them. I lost a few again, since.

Q. But most of them you still have?—A. Yes.

Q. So that was a permanent loss to the Standard Oil Company, was it?—A. Yes, sir.

Q. Did you make the arrangement with Berkow to come to you?—A. No, sir.

Q. Who did?—A. I had Berkow.

Q. I don't mean Berkow, but with Andrew, this driver.—A. No; he came down to my place and asked me if I could give him a position. He told me he had left the Standard Oil Company.

Q. Did he tell you how much the Standard had been paying him?—A. No; I didn't ask him that question.

Q. How much did you pay him?—A. $13.20 a week, the same as everybody else.

Q. And did he tell you that he could bring some of the Standard trade if you took him?—A. He said that he was satisfied that he could bring 75 per cent of the business.

Q. Did you offer him a commission on the business he brought?—A. No, sir.

Q. But you gave him permanent employment?—A. Yes, sir.

Q. And he has been with you ever since?—A. Yes, sir.

Q. And he still holds that trade that he brought from the Standard, with the exception of a few?—A. With the exception of one or two.

13794 Q. How many other drivers of the Standard have you taken away from them since you were manager there?—A. Two more.

Q. What are their names?—A. Oh, by the way—no, not from the Standard; from Blaustein.

Q. Didn't you take some from the Standard?—A. No.

Q. This is the only one you took from the Standard?—A. This is the only one I took from the Standard.

Q. Who are the two you took from Blaustein?—A. One man named Sadovske.

Q. And what is the other name?—A. Leimbach.

Q. When was it that you got Sadovske?—A. Sadovske I got in the early part of 1904, I think it was in the latter part of May, or June—first part of June; somewhere around that. He had left Mr. Blaustein and was going back in the canning business, and he was about two weeks capping cans in the packing house, when I heard of him being away from Blaustein, and I went down to see him, and ask him if he wouldn't come with me.

Q. And he came?—A. He came, yes, sir.

Q. And is he still with you?—A. He is. That is where that sixth wagon came in.

Q. How many customers did he bring with him?—A. I guess he brought pretty much all he used to serve for Mr. Blaustein down there.

Q. About how many would that be?—A. I really couldn't tell you the number.

Q. Twenty-five or thirty?—A. Somewhere around there.

Q. Or forty?—A. No, I hardly think so.

Q. Well, twenty-five or thirty?—A. Or thirty.

13795 Q. Those were customers that had been sold by the Eagle Oil Works?—A. Yes, sir.

Q. And that he brought over to you?—A. Yes, sir.

Q. And you have retained those customers, have you?—A. Sure I have.

Q. How much did you pay Sadovske?—A. The same wages.

Q. $13.20?—A. Yes.

Q. How much had he been getting before; do you know?—A. I couldn't tell you what he got before.

Q. Did you offer him any commission on his trade?—A. No, sir.

Q. But you have given him permanent employment?—A. Yes, sir.

Q. How about Leimbach? You said that was also in 1904?—A. Leimbach was in April.

Q. April, 1904?—A. Yes, sir.

Q. And how many customers did he bring you?—A. None. He was put onto my old route—my old original route.

Q. Didn't he get any customers at all from the Eagle?—A. No.

Q. How about this Home Safety Company, and the driver you got in that matter?—A. Dixon.

Q. I see I was a little confused on my notes. Your statement was, I think—I don't want to misrepresent it; I want to be sure I am right, but I have not the minutes before me of this morning; I have only rough notes. You testified, I think, that when this driver, Andrew, came to you and brought you, you said, 75 per cent of the Standard's trade, that the Home Safety Oil Company was put out on the streets of Baltimore. Was that your statement?—A. Yes, sir.

13796 Q. Was that the first time the Home Safety appeared there?—A. Yes, sir. They never had been seen in that neighborhood.

Q. You are quite sure about that, are you?—A. Yes, sir. I never seen them there before.

Q. Isn't it a fact that the Home Safety has been in Baltimore for over ten years?—A. Oh, yes.

Q. It has been there for ten years?—A. Yes, sir.

Q. Then, what did you mean by saying it was first put out there in Baltimore at this time?—A. It had never been seen in that section before—the section that this driver brought over lies in the territory of two streets and small intersecting streets in a direct line, about twelve blocks——

Q. Never mind the details. What you mean, then, is that the Home Safety wagon had not gone into that particular small piece of Baltimore; is that right?—A. Yes, sir.

Q. Now, they didn't go there until after you had taken this large block of customers away from the Standard through this driver?—A. No, sir.

Q. And after you had taken those thirty customers from the Standard, then you say the Home Safety wagon went there and tried to get some of that trade back?—A. Yes, sir.

Q. Well, I think most anybody would have done it under the circumstances.—A. I agree with you there.

Q. You don't think it was a very heinous thing for him to try to get back the trade that you had already just taken away from him, do you?—A. So far as I am concerned, I don't blame any man, for it is diamond cut diamond.

Q. It was a case of diamond cut diamond, was it? And you got the first cut in there; isn't that so?—A. My whole transac-
13797 tion down there was diamond cut diamond, and the best man won.

Q. There is no doubt about that. And you did everything you could to get business away from Blaustein?—A. Most assuredly I did.

Q. And did everything you could to get business away from the Standard?—A. I certainly did.

Q. And you were pretty successful, weren't you?—A. Well, that was my point.

Q. Well, you were, weren't you?—A. I certainly was.

Q. You don't think they got much ahead of you, do you?—A. I don't believe they did.

Q. You believe you got a little ahead of them, don't you?—A. I believe I did.

Q. You knew at the time that the Home Safety was a department of the Standard Oil Company, didn't you?—A. Oh, yes.

Q. Everybody knew that, didn't they?—A. Yes.

Q. It was perfectly well known?—A. That is, the storekeepers, as a rule, mostly all know it now. They didn't at first, but of course gradually it became known throughout.

Q. Yes; but at the time that you took this driver, Andrew, away, it was perfectly well known then, wasn't it?—A. No; it was not so well known in that section.

Q. Well, it was generally known through Baltimore, wasn't it?—A. Among the business men it was, but not amongst the consumers.

Q. It was known to some extent among the consumers, wasn't it?—A. Why, no.

Q. The Home Safety sold only to consumers, didn't it?—A. No; they sold to wholesalers, too. There was a man selling
13798 there only a couple of weeks ago—put some into a store, and my driver came driving by and said, "Here, none of that!" and slipped the funnel in quicker than he could have it in there.

Q. You don't think you need any guardian for carrying on business against the Standard Oil Company, do you?—A. No, by gosh! I don't.

Q. You don't need any help from the court to make you carry on that business, do you?—A. Not as far as I am personally concerned.

Q. At the time when the Home Safety wagon was put on in that section where this driver Andrew was working, did you tell the trade, or cause them to be told, that the Home Safety was a Standard department?—A. No; the driver done that himself.

Q. Well, he did do that, did he?—A. Yes. Of course, I went down there and helped him.

Q. So that everybody there knew, then, through the driver, that the Home Safety was a Standard affair?—A. Oh, yes; sure. Made it publicly known right through that section then. That helped us to retain the business.

Q. Now, this transaction, when the Home Safety wagon was put in on the territory that this man Andrew was driving on, was in 1906, wasn't it?—A. Yes—no; no, sir. That was in the latter part of 1907.

Q. In the latter part of 1907?—A. Yes, sir. The man has only been with me a little over a year.

Q. What time in 1907? In the latter part of 1907?—A. It was in the latter part of 1907. I don't exactly know whether it was in November or in December; it was somewhere around there.

13799 Q. Well, it was in 1907?—A. 1907.

Q. You are quite sure of that, are you?—A. Yes.

Q. Sure of it?—A. Because he has been with me a year now.

Q. But you are sure of that date, are you?—A. Now, there you go again!

Q. Do you or do you not say that it was in November, 1907?—A. I didn't say that I was quite sure it was November, 1907.

Q. Well, was it the last part of 1907?—A. It was somewhere around the latter part of 1907.

Q. Very well——A. No, by George! Here——

Q. And that is the time—wait a minute——A. No; this is the beginning of 1909——

Q. We are not very far in it yet.—A. Well, no, by gosh! It was in 1908.

Q. It was in 1908, was it?—A. Well, wait a minute, now. I get mixed up, now. Wait a minute. I want to be right on that.

Q. Well, now, was it 1907 or 1908?—A. 1907.

Q. The last part of 1907, was it?—A. The latter part of 1907.

Q. Now, that is the time we have been talking about, when the Home Safety for the first time put a wagon on this part of Baltimore where Andrew was operating?—A. Yes.

Q. Very good. In what shape does the Home Safety sell its oil?—A. In gallon cans and square cans.

Q. In gallon and square cans. Have you ever seen them?—A. Oh, yes, sir.

Q. Had you seen them as early as 1907?—A. Oh, yes.

Q. Had you seen them as early as 1906?—A. Oh, yes.

Q. Many times?—A. Yes.

13800 Q. Now, don't you know that this square can of the Home Safety has the name of the Standard Oil Company on it?—A. It has since, I think, the early part of 1907——

Q. Wasn't it the early part of 1906——A. ——quite shortly after Mr. Blaustein disappeared with the Eagle Oil Company; then it was at the bottom of the can stamped "S. O."

Q. Hasn't it got the label of the Standard Oil Company on it?—A. "S. O. Company" is all. "S. O. C.," that is all that is on there.

Q. Don't those cans have labels on with the name of the Standard Oil Company on in full?—A. A regular tag, do you mean?

Q. No, a label fastened on the can.—A. No, sir; it is a stamp on the bottom of the can.

Q. Is that the only place?—A. That is the only place I ever saw it.

Q. Well, at any rate, it says, "S. O. Company," and everybody knows that "S. O. Company" means "Standard Oil Company," don't they?—A. Well, lots of people don't look at that.

Q. You have no doubt that lots of people know that that is the Standard, have you?—A. I do, and you do. But my wife wouldn't, I guess.

Q. If these cans were set out with those letters on, in the early part of 1907, then they must have been on the cans that were distributed in connection with this man Andrew's route?—A. Oh, yes; they were on there then, certainly.

Q. Mr. Wolff, what is called "peddling" means selling from house to house, doesn't it?—A. House to house, yes, sir.

Q. To consumers?—A. To consumers.

13801 Q. To housekeepers, or whoever use oil directly?—A. Yes, sir.

Q. Now, you are acquainted with that line of business, are you?—A. No, I am not. I don't do anything in that line.

Q. You know in a general way how it is carried on, don't you?—A. Oh, yes; I know how it is carried on.

Q. Is it customary for the peddler to give any receipt to the housekeeper to whom he sells oil?—A. No.

Q. He doesn't give any receipt at all?—A. No.

Q. Now, you testified this morning something about this man Ruehl. It was John H. Ruehl, wasn't it, who had this route originally?—A. Yes, sir.

Q. And you said that Warren Dixon was put on the route; is that what I understand you?—A. Yes, sir; Warren S.

Q. When was that?—A. I think in 1903.

Q. 1903. Is Dixon in your employ now?—A. Yes, he is in my employ now.

Q. Well, what you know about that is what he told you, I suppose?—A. No, what I saw with my own eyes. Of course I know that he was put on there. He told me that himself. But I seen him on——

Q. All you know about it yourself is that you saw him driving around?—A. I saw him driving the wagon over that route.

Q. You don't know, of your own knowledge, how he came to do that?—A. No.

Q. Only what he told you?—A. Only what he told me.

Q. And you don't know as to anything he did, except what he told you, and except the fact that you saw him driving around?

13802 You didn't go into the stores to see what he did?—You didn't follow him there?—A. He doesn't go into stores. He goes in the private houses.

Q. Well, you didn't go into the houses and see what took place there?—A. No; I didn't.

Q. You didn't follow him around and see where he went, everywhere?—A. No.

Q. You simply about that know what he has since told you?—A. Only what he told me and what the people told me in the neighborhood; that is all; principally Mr. Baumgartner and Mr. Schwartz.

Q. Where is Mr. Dixon now—in Baltimore?—A. He is in Baltimore now, I guess; or he may be on his way over here, for all I know.

Q. When did you hire Dixon?—A. When did I hire Dixon? If I am not wrong, it was last summer two years ago, if I am not mistaken. He was a conductor on a street-car when I took him. He came to me first, and I was scared of him, afraid he was a tool of Mr. Blaustein, and I didn't trust him; and after I saw he was——

Q. Very well—you needn't go on with that. It was last summer. That is all I wanted to know.—A. Not last summer. Two years ago.

Q. I mean two years ago last summer. That was in 1906?—A. 1906. I am most sure it was in 1906.

Q. Now, subsequently to that time, George Ruehl, you said, was put on Ruehl's route. You don't know anything about that beyond the fact that you saw him driving around the street, do you?—A. Who?

Q. George Ruehl.—A. George Ruehl, I saw him on the street; and George Ruehl told me himself afterwards.

13803 Q. You haven't any personal knowledge as to how he came to be put on the street?—A. Oh, no, no. The Standard Oil Company wouldn't tell me that.

Q. Nor have you any personal knowledge as to whether he had anything to do with Blaustein beyond merely what he told you, I suppose?—A. No.

Q. He was a peddler, wasn't he?—A. No; he was a peddler for I think about two weeks or three weeks, or something like that.

Q. He did a peddling business only for——A. Only for a short while. He came into existence, and he was gone.

Q. Well, while he was there he did a peddling business, did he?—A. Yes.

Q. Now, it was this man who, you say, sold the gasoline at 6 cents?—A. Yes, sir.

Q. And you said you knew that because you saw the receipts?—A. Yes, sir.

Q. Now, just a moment ago you told me peddlers never gave receipts. How do you now account for your statement that you say you saw Ruehl's receipts?—A. Do you want that explanation?

Q. Yes.—A. Good! Mr. Metzel went there and set a trap for this man. He asked Mr. Schwartz to get a bill and receipt for those five gallons of oil, and he was buying it for a customer of his that lives in the country—a farmer. And he gave that receipt, and he turned the receipt over to Mr. Metzel.

Q. You know that because Mr. Metzel said so to you?—A. No; Mr. Schwartz himself showed it to me.

Q. Who is Mr. Schwartz?—A. A harness-maker.

Q. Is he the man to whom the oil was sold?—A. Yes, sir.

Q. What was the price on that receipt?—A. I think it was 6
13804 cents, to the best of my recollection.

Q. Are you sure?—A. This has been so long ago that I won't tie myself down to exactly a certain price.

Q. No. You won't swear it was 6 cents, will you?—A. It may have been five.

Q. You are not any more sure about that than you are about those dates, are you?—A. What dates are you talking about?

Q. You have been unable to fix a great many dates that I have asked you for, and you said you didn't remember them with any certainty. Now, you don't remember these prices any better, do you?—A. I certainly don't remember the prices any further, because it certainly didn't concern me any more; it was all over and forgotten. I have got too much other business on my hands except that.

Q. Then you don't know whether it was 5 cents, 6 cents, or 7 cents?—A. No; I couldn't tie myself down to that, but I know it was a low figure. It was a figure two or three cents below the wholesale price. If I knew at the present time what the wholesale price then was, I might tie myself down to that——

Q. Are you willing to swear it was two or three cents below the wholesale price?—A. Yes, sir.

Q. Positive?—A. Yes, sir.

Q. But you don't know what it was?—A. No; I can't tie myself down to that, because I forget what the wholesale price at the time was.

Q. And this transaction when this receipt was given, you say that Mr. Metzel went and told this man Schwartz to tell Ruehl——A. To tell Ruehl.

13805 Q.——that the gasoline was for some customer in the country?—A. That he was buying it for a customer in the country, and that he would like to have something to show that he paid.

Q. And that he was going to get a special price for him, I suppose?—A. No; he didn't say anything about a special price.

Q. Well, it was a special inducement, wasn't it, for a particular customer in the country?—A. No; there was nothing said along that line, to my knowledge.

Q. But whatever was said it was not true, was it?—A. What are you talking about?

Q. Whatever was said by Metzel to this customer, and which the customer represented to George Ruehl, wasn't true?—A. That he was getting this for another party?

Q. Yes.—A. No; that wasn't true.

Q. That wasn't true?—A. No.

Q. That was a lie, was it?—A. Sure.

Q. Now, you said, if I have you correctly noted here, that in the latter part of 1902 you talked with Mr. Davidson with reference to trying to get Mr. Blaustein's business. Did I so understand you?—A. Yes.

Q. So as early as the latter part of 1902——A. No; 1903.

Q. Oh, you say it was 1903, do you?—A. In the latter part of 1903, not 1902.

Q. Then in the latter part of 1903 you consulted with Mr. Davidson with reference to getting Blaustein's business away from him, did you?—A. In regard to getting the big stores away from him; yes, sir.

Q. As much of the business as you could, I suppose, from
13806 him?—A. Sure.

Q. And you laid a plan to do it?—A. I certainly did. I started the ball rolling.

Q. And you started gunning for Blaustein's business?—A. I certainly did.

Q. And for the Standard's business?—A. I certainly did.

Q. And you have kept it up, haven't you?—A. I have.

Q. You said that you had a conversation with Mr. Blaustein in which he offered you a position at the rate of $150 a month?—A. And $30 spending money.

Q. When was that?—A. That was in April, 1904; beginning of April, 1904, I think.

Q. April, 1904?—A. Yes, sir.

Q. Where was it?—A. On McElderey street and Bethel.

Q. Was it out-doors on the street?—A. That was on the street.

Q. At the corner of those two streets?—A. Yes, sir.

Q. In April, 1904. Was anybody else in the conversation?—A. No. Later on there was; in the afternoon—at night.

Q. No, but at that conversation?—A. Not at that time.

Q. Nobody but you and Blaustein?—A. That is all.

Q. And Blaustein offered you a position at $150 a month?—A. Yes, sir.

Q. And $50 spending money?—A. Yes, sir—$30.

Q. $30 spending money. And you refused it?—A. I certainly did.

Q. Was that all the conversation at that time?—A. Oh, no.

Q. What other conversation was there?—A. He told me that Mr. Davidson was going to treat me the same as he had treated one of the other men—discharged him of a sudden—and that he
13807 would do even still worse, which he did. Every word that

Mr. Blaustein stated to me that night came true. Although he made the same offer in the presence of Mr. Kontz, on Pratt street.

Q. Who is Mr. Kontz?—A. He is a wholesale liquor-dealer. John Kontz.

Q. When was that—on the same day?—A. That was on the same day. That was that night. He met me there and——

Q. You stated according to my notes, that this man Crook at some time got a rebate from Blaustein as well as from the Standard. I suppose you know that simply because you were told, do you?—A. Yes.

Q. You were not present at any time——A. No.

Q. Now, in regard to these arrests for selling oil below the city tests, how many trials do you say there were?—A. There was one trial in the eastern station.

Q. Do you mean one police trial? In the police station, do you mean?—A. Yes, sir.

Q. Of what person?—A. There were a number of them; all together, about fourteen or fifteen cases at that time; just in that station-house, that very day.

Q. Do you mean that they were all tried there?—A. Yes, sir.

Q. You don't know their names. Well, where else were there any trials?—A. There were some in the southwestern, some in the northeastern, one in the western.

Q. Where was the case of the Crew-Levick Oil Company tried?—A. In the Baltimore city court.

Q. Before what judge, do you know?—A. Before Judge W-r-i-t-h, I think it is.

13808 Q. As a result of that trial the company was fined, was it not?—A. No, sir; the company was acquitted.

Q. You are sure of that, are you?—A. Yes, sir. Shall I repeat the words to you?

Q. If I should bring you the record of a fine, would you then admit you are mistaken?—A. No, sir; I will not.

Q. Not even if the record is against you, eh?—A. No, sir.

Q. Well, you will have an opportunity, and perhaps of facing it somewhere else, too.—A. All right, sir.

Q. Now, what other trial? You spoke of a trial before a magistrate named Goldman?—A. Harry Goldman.

Q. Henry Goldman?—A. Harry.

Q. Who was it that was tried before him?—A. Mr. Crook; that is, the Edmonson Avenue store. Mr. Crook had six of his stores arrested, but only one was tried—in the western station. All cases must be tried in the particular district where the station-house is.

Q. Were you present at the trial?—A. No, sir.

Q. How do you know it was tried before Judge Goldman?—A. Mr. Benzinger, our attorney, informed me to that effect, sir.

Q. You are speaking now about the trial of the Crook concern, aren't you?—A. Yes.

Q. You are sure that that was not before Judge Soper? Wasn't there a Judge Soper there?—A. I can't tell you. I wasn't there.

Q. You only know what you were told?—A. Only what I was told.

Q. If I should show you that that trial took place before Judge Soper, you would say you are mistaken, wouldn't you?—
13809 A. Certainly I would.

Q. You only know what was told you?—A. That is all I know.

Q. How do you know that Judge Goldman is a relative of Mr. Blaustein?—A. I don't know. Mr. Benzinger stated that to me.

Q. You stated this morning that he was a brother-in-law of Mr. Blaustein?—A. That is the report Mr. Benzinger gave to me.

Q. Then you have no knowledge of it except what Mr. Benzinger told you?—A. No, sir.

Q. And if Blaustein should contradict you in that regard, you would admit you are mistaken, would you not?—A. Of course. So far as I am concerned, I don't know anything about it. I only know what I was told.

Mr. CRAWFORD. I move to strike out of the record all testimony of this witness in regard to alleged price-cutting, alleged giving of rebates or concessions by the Standard Oil Company, or by the Eagle Oil Works, or by Mr. Blaustein, and all testimony as to any transactions with customers of the Crew-Levick Company, or of the trade generally, in whole or in part, in Baltimore, said to have been made by the Standard or by the Eagle Oil Works or by Mr. Blaustein, with the single exception of the one transaction in the store of Mr. Sause, on the ground that by the admission of the witness it is all hearsay and not based upon personal knowledge.

Q. I show you a metal tag, and ask you if you have ever seen any tags like that?—A. I have not.

Q. Don't you know that those tags, or similar ones, are attached to all cans of the Home Safety Oil Company?—A. I have never
13810 seen it on there. It must have been placed on lately, then. I have not had one of their cans in my hands for a year, I guess—maybe better. They may be on there now. I won't say it is not.

Q. Well, will you swear that they have not been used on the cans of the Home Safety Oil Company for three years past?—A. I can't swear to anything I don't know anything at all about. All I can swear to is that I didn't see it. What are you trying to do?

Q. Will you swear that those cans did not bear tags or metal labels with the words "Standard Oil Company" plainly printed in connection with the name "Home Safety Oil?"—A. I will not swear to that. The only thing I ever seen on them was "S. O." stamped on the bottom of the can.

Redirect examination by Mr. MORRISON:

Q. You stated that on the first day after you became manager all of your rigs sold about 400 gallons of oil?—A. Yes, sir.

Q. Was that because you didn't have drivers and equipment to supply them?—A. Yes, sir. I had no customers. I didn't know where they were, excepting my own lot.

Q. About what was the normal business that Crew-Levick & Company was doing at the time this change was made?

Mr. CRAWFORD. Do you mean——

Mr. MORRISON. In gallons.

Mr. CRAWFORD. April, 1904?

Mr. MORRISON. Yes.

A. I couldn't tell you that. I know we had five wagons
13811 running, and that each wagon averaged somewhere around four or five hundred gallons, according to the weather; sometimes only two or three hundred; sometimes they averaged as high as seven or eight hundred.

Q. At about that time?—A. I couldn't tell you that.

Q. Well, what I want to get at is whether this 400 gallons that you say you sold on or about the first day after you took hold was a fair statement of what the company was actually doing——A. That day.

Q. ——or whether or not it was that low amount on account of the fact that your force was disorganized?—A. That was the cause of it. That only was for one day. The rest of the wagons, in going around hunting for the trade, where they did find a customer he had already been served. Of course, the next day we picked up better, and we gradually increased our business again.

Mr. CRAWFORD. But that 400 gallons was, you say——

WITNESS. Only that one day.

Q. Did you explain, in you direct examination, about your selling at a half cent below the regular price in 1905, and did you give the reasons for it?—A. In 1905?

Q. Yes.—A. Yes; in 1905, as I stated on my direct examination, the fight was; in general that was the time I drove Mr. Blaustein down in his prices, when I went out and made the proposition "Deal with us"——

Q. You made a proposition to the Standard's customers?—A. I made a proposition to the Standard's customers, and I made
13812 a price to my own trade, to keep Mr. Blaustein from getting them, and kept him busy in getting the Standard Oil Company's business back again from us.

Q. Did you make a lower price to your customers than the Eagle was making to them?—A. Than the Eagle? No, sir; I met the Eagle price.

Q. The Eagle cut the price first?—A. They cut the price and I met the price to my trade.

By Mr. CRAWFORD:

Q. You say that the Eagle cut the price first in 1905. You mean, of course, that you were told by customers that they had cut?—A. Customers left me—stopped buying. That was clear proof. No customer will leave you if he has no reason, if your services are correct, if your driver does what is right to a customer—gives him prompt

service and everything that is needed—especially accommodating drivers; no customer will leave you without you make him a concession.

Q. In the price?—A. In the price.

Q. That is general, isn't it?—A. Yes, sir.

Q. And in the same way, you didn't get any customers away from the Standard except by making them a concession in price?—A. Oh, yes; I did.

Q. Then how was it—if you could get customers from them without making a concession, why couldn't the Standard get customers from you?—A. The Standard hasn't got the argument we have.

Q. Oh, you have a winning way, have you?—A. Why, certainly.

Mr. MORRISON. Now, you did, I assume—and you also testified—talk with your trade?

13813 WITNESS. Yes, sir. I stated also in my testimony what I did say to the trade.

Mr. CRAWFORD. And your knowledge about the Eagle cutting, other than the fact that you lost some customers, was what your customers told you.

WITNESS. Exactly.

13814 WILLIAM H. FEHSENFELD, recalled in behalf of petitioners in rebuttal, testified as follows:

Direct examination by Mr. MORRISON:

Q. Mr. Fehsenfeld, you have testified in this case on a former occasion when the Government was putting in its testimony?—A. I have.

Q. Mr. Wilmer and some other witnesses on behalf of the defendants have testified that at various places, to which I will call your attention more specifically later along, they gauged the barrels that you had shipped oil in to your customers and found them overgauged. I want to ask you first to explain, in a general way, how your barrels were gauged and what the method and process is in gauging barrels, and what instructions, if any, you gave to your employees, and what care you took as to the accurate gauging of your barrels.—A. We receive empty barrels which are returned to us by our customers, whether originally shipped by us or some of our competitors, and all the barrels of a capacity of less than 47 gallons are rejected for use in the shipment of burning oil. Those barrels are recoopered, reglued——

Q. Which barrels do you mean?—A. All barrels that are used for refined oil or for any other purpose.

Q. You don't mean those under 47 gallons?—A. Well, they are used for other purposes.

Q. Yes, but they are not used for oil purposes?—A. Not for refined oil; not for burning oil.

Q. Now, is there an interchange of barrels? That is to say,

13815 do you get barrels that may have been sent out by the Stand-

ard and by other companies, and do they get your barrels?—A. Yes.

Q. When an empty barrel comes back to your works and you are about to refill it, what is done with that barrel?—A. The barrel is sent into the cooperage department, there recoopered, reglued, and repainted, then gauged and filled.

Q. Describe how they are gauged, and just what the process is.—A. They are gauged by our employees with a gauge rod, recognized as standard, and the work is carefully done.

Q. Have you given any particular attention to that branch of the work?—A. I have.

Q. What have you done in that respect?—A. I have especially cautioned the superintendent at our works and our employees at our works to be very careful to gauge all barrels correctly; and after the barrels have been gauged by them I have on different occasions gauged them myself, and after barrels have been filled I have had the bungs knocked out and either gauged the barrels myself or had our men gauge the barrels and compare the gauge with the gauge that had been stamped on the head by our men. Moreover, when I am at home—and I am at the office most of the time—I examine most of our invoices and determine from the general character of the gauges that the work is correctly done. Moreover, on receiving tank cars of oils on different occasions I have instructed that the contents of those tanks be put into our storage tanks and a record taken of the number of gallons that were received and the number of gallons that have been shipped in barrels, in order to make sure that the gauging was properly done.

13816 Q. Is there any record kept of the gauging of barrels?—A. Yes; because all invoices are rendered from the gauges that are reported from our works.

Q. Is the gauge of a barrel printed or stamped upon that barrel in a public place, where anybody can see it?—A. It is stencilled; yes, sir.

Q. Where?—A. On the head of the barrel.

Q. Showing the exact capacity of that barrel according to your gauging?—A. Yes.

Q. So that any customer buying that barrel of oil knows what that barrel is claimed to hold, does he not?—A. Yes.

Q. From the stencil gauging on the head of the barrel?—A. Yes.

Q. And it is a simple matter, is it not, to test that and see whether that guaging is correct—by filling the barrel?—A. Yes; and by emptying the contents of the barrels into storage tanks of the merchant.

Q. The ordinary way of gauging a barrel is by a certain kind of a rod, is it not?—A. It is.

Q. What is that called?—A. It is a standard gauge rod, which we obtain from the Charles J. Tagliabue Manufacturing Company, of New York City.

Q. When you state "standard" you do not mean that it is Standard Oil, but that it is the rod that is recognized as correct?—A. It is.

Q. What is the average gauge of oil barrels?—A. In the purchase of new barrels I find that they will run from 52 to 53 gallons.

Q. What is your average gauge?—A. About 51½.

13817 Q. How do you fill these barrels?—A. They are filled through patent filling spigots, through which the oil continues to flow until the barrel is filled to its proper capacity, when the oil releases the float—when the oil lifts the float, which releases a lever and shuts off the flow of the oil.

Q. Is that set so that it fills the exact number of gallons into that barrel that is stencilled upon the barrel?—A. It can be so set.

Q. Is that the way the business is generally done, or do you simply fill them until they are full?—A. They are filled to their proper capacity.

Q. According to the stencil on the barrel?—A. According to the stencil on the barrel.

Q. The question that I want to get at is whether you always use that patent filling machine and so adjust it in the beginning that it fills into a particular barrel the exact number of gallons that the gauge on the head of the barrel shows that it will hold?—A. We do.

Q. So that you have, then, a double test as to the correctness of the number of gallons of oil which your barrels hold? First, you have the gauge which is stencilled on the barrel—is that right?—A. We do.

Q. Secondly, you have your automatic filling machine—am I right about that?—A. It is automatic only as to the uniform filling of the barrels. It has nothing to do with the contents.

Q. You don't fill a barrel quite full, do you?—A. We do not.

13818 Q. Now, I don't know that I quite understand you—whether or not this automatic patented machine assists you in the accurate filling of the barrels or not. Does that in any way assist you?—A. It does.

Q. Just explain that.—A. Because the filler is inserted into the barrel, and the filler has a float, and when the oil rises to the level of that float it raises the float, which releases the lever, and the flow of the oil is shut off.

Q. How is that machine adjusted—to any particular number of gallons? Suppose you have a barrel before you that has stencilled on the head of it as a capacity "52 gallons;" you are going to fill that barrel through this patented device. Is that patented device so set that it will put just 52 gallons into that barrel?—A. No, sir.

Q. That is the point I wanted to get at. You were going to explain a little about that, were you?—A. I will, if I am permitted. If you want me to do it, I will be very glad to do it.

Q. Yes; do it.—A. Let this [indicating the opening in an ink bottle] represent the bunghole of an oil barrel. If this represents

the bunghole of an oil barrel, the filler is inserted into that. The oil continues to flow from the storage tank until the oil in the barrel reaches a certain height, when it touches the float and lifts it, which releases the lever that shuts off the flow of the oil from the storage tank into the barrel.

Q. So that you know that that barrel is filled properly?—A. Yes.

Q. Mr. Wilmer testified about gauging some barrels that
13819 had been sent to Carroll Brothers, or that Carroll Brothers handled from your refinery or from your works at Baltimore. Who were Caroll Brothers?—A. Merchants at Yorkville, South Carolina.

Q. Were they in any way representing you?—A. They were.

Q. What were they—your commission men?—A. They made up carloads of oil by securing orders from various merchants at Yorkville.

Q. Did you ship them any oil?—A. We did.

Q. When did you make the first shipment? Have you any——A. I have some memoranda here.

Q. Taken from your books?—A. Taken from our books. [After referring to memorandum.] We made the first shipment February 14, 1906.

Q. What did you ship them then?—A. Sixty barrels of oil.

Q. What was the average gauge?—A. The average gauge of that shipment was 51¾ gallons.

Q. Did you make a shipment June 14, 1904, of another carload of oil?—A. 1906?

Q. 1906.—A. We did.

Q. What was the average gauge of those barrels?—A. Fifty-one and three-fourths gallons.

Q. Did you make another shipment on September 26, 1906?—A. We did.

Q. A carload?—A. Yes.

Q. Sixty barrels?—A. Yes.

Q. What was the average gauge of those barrels?—A. Fifty-one and one-fourth gallons.

Q. Did you ship another carload of 60 barrels on November 23, 1906?—A. We did.

13820 Q. What was the average gauge?—A. Fifty and seven-eighths gallons.

Q. Did you, on March 9, 1907, ship 66 barrels to Carroll Brothers?—A. We did.

Q. And what was the average gauge there?—A. The average gauge of the 23 barrels was 50 gallons.

Q. And the 43 barrels?—A. Fifty-one gallons.

Mr. CRAWFORD. Is that the March shipment?

WITNESS. March 9, 1907.

Q. Did you ship all of this to Carroll Brothers, or did you ship a part of it to customers that they had sold to?—A. It was all consigned to Carroll Brothers, and on arrival of the shipment they de-

livered the portion of the car that had been sold by them to the merchants, and the balance——

Q. Who settled with the merchants for the oil, you or Carroll?—A. The merchants. The invoices were rendered direct from our office, and the merchants remitted direct to us, as a general rule.

Q. So that you made the settlement with all of the parties that got all of this?—A. All that went to Carroll Brothers; we did.

Q. Did you have any complaint from any of them that your barrels were overgauged?—A. Not to my knowledge.

Q. You would know about it if you had, would you not?—A. I would like to qualify my statement.

Q. Yes; state just what the facts were.—A. The fact that we received a letter from Carroll Brothers, reporting that a representative of one of our competitors had gauged some of our barrels and reported that they were overgauged.

13821 Q. Well, in settling with your customers, did you have any complaints?—A. Not to my knowledge.

Q. Have you looked over your books to see if you made any deductions from your accounts on account of any overgauging of barrels?—A. I have.

Q. What was the result of that search?—A. I found no instance of a deduction for overgauging.

Mr. Crawford. Have you got that letter?

Witness. I have, sir.

Mr. Crawford. Have you got it here with you?

Witness. I have, sir.

Q. You have all your correspondence here, have you not, with Carroll Brothers?—A. Pertaining to these transactions?

Q. Yes.—A. Yes.

Mr. Morrison. We will introduce them if you want them, Mr. Crawford, all of them—the entire correspondence.

Q. Mr. Wilmer testified to the overgauging of your barrels at Rockville, Maryland, barrels that were shipped to Washington Hicks. Did you have any controversy with Mr. Hicks over the question of the gauging of his barrels?—A. Not to my knowledge.

Q. Did you make any allowance, or were you asked to make any allowance, on account of overgauging barrels to Hicks?—A. Not to my knowledge.

Q. Your books will show whether you made any allowance, will they not?—A. They would.

Q. Did you?—A. Not to my knowledge.

Q. Well, what do your books show? Have you looked over your books?

13822 Mr. Crawford. I object to what the books show, unless——

Q. Have you examined your books so that you know whether or not they show whether any allowance was made for overgauging of the Hicks barrels?—A. I did not in the case of the Washington Hicks account. I am very sure that we made no allowance of any kind to Mr. Washington Hicks.

Q. Well, Mr. Hicks is here himself, isn't he?

(No response.)

Q. Mr. Wilmer also testified that he found your barrels that you had shipped to J. W. Benson, of Grifton, Maryland, had been overgauged. Have you examined your books to see whether you made any allowance on overgauging barrels to him?—A. I have not.

Q. Did he ever make any claim to you that the barrels were overgauged?—A. Not to my knowledge.

Q. Has he been a customer of yours right along?—A. I think so.

Q. Do you remember when you commenced to sell to Benson, of Grifton?—A. J. W. Benson, of Grifton, Maryland; that is in Montgomery County, Maryland. Mr. W. J. Metzel canvassed that territory regularly, and if there were any complaints of overgauging, or any other cause, Mr. Metzel would make the report to me.

Q. Has he reported to you that there was any trouble there about overgauging barrels?

Mr. CRAWFORD. Objected to as hearsay.

WITNESS. He has not.

Q. Do you know whether he is now one of your customers?—A. J. W. Benson?

13823 Q. Yes.—A. I think he is.

Mr. Eitel testified, also, that he found barrels that were overgauged at Deal's Island, Maryland, but he gives no date and gives no name, so far as our minutes show. Do you know anything about that? Have you had any complaints from there?—A. Not to my knowledge.

Q. Mr. Blackwelder says that he gauged 24 barrels at Charlotte, North Carolina; that 23 of them were overgauged; and he names N. M. Wallace, L. W. Austin, Surratt & Blakeley, Davis & Barley, E. A. Moffitt, R. A. Beattie, and J. W. Daniels and S. H. Youngblood as the merchants whose barrels he gauged. Do you remember of doing business with those people?—A. I do.

Q. Have you looked over your records to see whether or not any allowance was made to anybody at that place, or to any of these men whose names I have mentioned, on account of overgauging of barrels?—A. I have.

Q. What do you find?—A. I found that there has been no allowance of any kind made in the settlement with those parties. In my investigation of that statement of Mr. Blackwelder, I found that it referred to our shipment of January 18, 1906, of 60 barrels of oil, the average gauge of which was 51½ gallons. Our salesman, Mr. Olin Metzel, called very soon after Mr. Blackwelder had, and the merchants had reported——

Mr. CRAWFORD. Called where?

WITNESS. At Charlotte, North Carolina, on the same merchants.

Mr. CRAWFORD. I object to the witness testifying to anything that transpired between Mr. Metzel and these merchants

13824 when the witness was not present. That is hearsay.

Q. Well, he called there after you made this first sale there, did he not?—A. He did.

Mr. CRAWFORD. Well, wait a minute. I object to the testimony as to his calling, and move to strike that out, because the witness was not present, and that is obviously information on hearsay.

Q. Do you know from your records and from having sent him there, whether or not he called and whether or not he made another sale there?—A. I do; and he made another sale on February 13, 1906.

Q. To the same people?—A. To the same people. The average gauge of that shipment was 52 gallons.

Q. And you had no complaint of any kind from any of those people?—A. We had not.

Q. Have you examined your books as to all of these people that these witnesses testified about as to the over-gauging of barrels, to see whether you have made any allowances to any of them?

Mr. CRAWFORD. He expressly said he did not make any examination as to some of them.

Q. I am asking you if you have examined your records as to all of these persons that I have asked you about?

Mr. CRAWFORD. He has already testified that he has not.

Q. Well, I will ask you now whether you have or have not?—A. With reference to Charlotte, North Carolina, and Yorkville, South Carolina, I did.

Q. Did you as to any others?—A. I knew of no others, except that of Washington Hicks and the Deal's Island matter.

13825 Q. Well, what about those?—A. We are selling Mr. Hicks regularly, and have done so for years, and have received no complaints from him of overgauging or any other cause. The Deal's Island shipment we could find no record of.

Q. Did you make any sale to anybody at Deal's Island?—A. We have sold to Deal's Island off and on for twenty years. No date was given as to the shipment, nor was the name of the party given, Mr. Morrison, in the case of Deal's Island, so it was impossible to find out.

Q. Have you at any time, say within the last eight or ten years, made any allowance to any dealer on account of the overgauging of barrels?—A. We have not.

Q. Have you been called upon by any dealer to do that?—A. We have not.

Q. Has any complaint reached your office from any source that your barrels were overgauged and did not hold as much as the gauge would indicate they should hold?—A. We have.

Q. How many of those cases?—A. Complaints of that character reached us quite generally while the bogus companies were operating against us, and, as best I could learn, trick methods were invoked——

Mr. CRAWFORD. I object to this as hearsay information. Tell what you know, Mr. Fehsenfeld.

Q. Well, during the time the bogus companies were operating against you, you did receive some complaints?—A. We did.

Q. Were they from the customers, or from whom?—A. From the customers.

Q. How were those complaints adjusted?—A. By writing
13826 letters to the customers, explaining our manner of doing business, the gauging of our barrels, requesting that they actually measure the contents of the barrels with a one gallon measure.

Q. Did you lose any customers on account of it?—A. We have not lost any customer through overgauging.

Q. And you never refunded anything on account of any of those complaints?—A. We did not.

Q. Your method of handling those complaints, as I understand you, was to take the matter up with the customer and explain how you gauged your barrels, and invite him to measure; was that it?—A. We believed——

Mr. CRAWFORD. I object to what the witness believed.

Q. The question is, whether that was your method of handling those complaints.—A. It was.

Q. And it always resulted, as I understand you, without the loss of trade or without making any payments?—A. I recall no instance of the loss of a cutsomer.

Q. You sell a red oil that you call the Red "C" and a white oil that you call the White "C," do you?—A. We do.

Q. How long have you been putting those two brands upon the market?—A. About 30 years.

Q. And what is the difference in the price to the trade?—A. One-half cent per gallon.

Q. Who fixes the price of what your oil is sold for?—A. I do.

Q. And you make a half-cent difference on the gallon?—A. I do.

Q. Has that been uniform, or has there been any time when there has been a greater difference than that?—A. I recall no time that there has been a greater difference.

13827 Q. Some of the witnesses testified that you were selling the red oil for 2, 3, and 4 cents per gallon more than the white oil. Is that a fact?

Mr. CRAWFORD. I object to that as not properly representing the testimony, which was that it was sold in different localities; not that this witness was selling it.

Mr. MORRISON. Well, that his company was selling it.

Mr. CRAWFORD. Selling it in certain localities, yes.

Q. What is the fact about that?—A. That we have never sold the Red "C" oil at more than one-half cent per gallon above the price of the White "C" oil.

Mr. CRAWFORD. Do you mean that you personally have not?

WITNESS. The company has not.

Mr. CRAWFORD. You don't pretend to know what has been done in your name in every place in the country, do you?—A. I keep myself pretty well informed.

Q. Every sale that is made of your oil has to pass through your hands, does it not—the orders?—A. No.

Q. Whose hands does it pass through?—A. Through the hands of our employees.

Q. There in the office?—A. In the office.

Q. The orders are sent in to the office?—A. Yes.

Q. You are right there, in charge of the business, are you not?—A. Yes, and when I am home I know what shipments are made, for I examine the invoices.

Q. The prices that your salesmen are authorized to sell for are given out by you or your company, are they not?—A. They are.

13828 Q. You are familiar with the prices that have been charged for Red "C" and White "C," are you not, the relative prices?—A. I am.

Q. During all the time that you have been connected with the company?—A. 22 years.

Q. And you state that the only difference has been half a cent a gallon?—A. I do.

Q. What makes this difference in the price between the two oils?—A. The cost of coloring.

Q. Have you ever represented to the trade that the Red "C" oil was a natural product and came out of the ground red?—A. I have not.

Q. Did you ever hear of that representation being made before Mr. Blaustein took the witness stand?—A. I did not.

Q. You did hear about his testimony in that respect?—A. I read that in the papers.

Q. Have you any literature that shows what the difference in price is between the two kinds of oil—pamphlets or circulars of any kind showing the difference in price?—A. Our printed price cards always showed the difference of one-half cent per gallon between the Red "C" oil and the White "C" oil.

Q. Have you any of them with you?—A. I have not; but we advertise quite generally, and have advertised for years, using the words "Same in all respects except in color."

Q. Have you any of your advertisements with you?—A. I have [producing pamphlet].

13829 Mr. MORRISON. I don't know as there is any use of lumbering up the record with all of this. I will not offer it as an exhibit.

Mr. CRAWFORD. What part do you want to put in?

Mr. MORRISON. I will offer a portion of that page [indicating to Mr. Crawford].

Q. How generally were those distributed to your trade?—A. To the dealer and to the consumer.

Q. Well, how generally?—A. More generally than any other advertising matter or any other mailing matter that has ever been issued from our office.

Q. Do your traveling salesmen carry them with them?—A. They do; using them as business cards in many cases.

Q. Have you issued that kind of circulars yearly?—A. Constantly since 1895.

Q. You have kept them constantly in the hands of your salesmen?—A. Yes.

Mr. MORRISON. I will read from this the following: "Facsimile barrels of the Red 'C' oil and the White 'C' oil. These oils differ only in color, one being a rich red, the other a pure spring-water white, and they afford the highest possible illuminating power, are absolutely safe, and are recognized by experts and consumers wherever known as the best oils made. The Red 'C' oil is the original red oil. There are inferior imitations. Get the genuine."

Q. Have you any price list that you circulated among the trade showing the price of the Red "C" and the White "C" oil as compared with each other?—A. None with me, sir.

13830 Q. You have issued them, have you?—A. We have.

Mr. MORRISON. Now I want to offer what he says about the Red "C" and White "C" in another pamphlet here. It is about the same thing [showing the pamphlet to Mr. Crawford].

Mr. CRAWFORD. Do you want to put in that paragraph?

Mr. MORRISON. Yes. I will read into the record now from the other pamphlet that you handed me, this paragraph: "The Red 'C' oil is a beautiful ruby red, and the White 'C' oil is a clear, sparkling, spring-water white. They are the same, except in color, contain the highest light-giving properties, being the very heart, or essence, of the best crude petroleum produced, and there are more than twenty lower grades, each different from the other."

Mr. CRAWFORD. Will you just keep those, so that if I want to cross-examine on them I can do so?

Mr. MORRISON. Yes.

Q. Have you any other literature, now, in reference to these two kinds of oil?—A. No, except regular quotation cards, of which, unfortunately, I have none with me.

Q. You have none of your regular quotation cards?—A. No, I have not.

Q. Do you issue quotation cards showing the prices at which you are selling these oils?—A. We do.

Q. Are those distributed generally to the trade, or are they carried by your salesmen?—A. They are distributed to the trade through the mails.

Q. And do they show the difference in the price between the two oils?—A. They do.

13831 Q. Does any other company aside from your company sell a red oil?—A. Yes, oil companies generally do.

Q. In what section of the country is the red oil usually sold?—A. In the South.

Q. Has the Standard Oil Company a brand of red oil that it sells?—A. They have; red carnadine, or carnadine red, I am not sure which.

Q. Do you know what difference they make in the price of the two oils?—A. Either one cent per gallon more than the white or one half cent per gallon less than the white.

Q. There is a difference between the price, and that difference is recognized by all of the companies that handle these two different colors of oil. Is there any other company besides the Standard and your company that handles a red oil?—A. The Sherwood Brothers, of Baltimore.

Q. The Sherwood Brothers have a red oil too?—A. Yes.

Q. Do you think of any others?—A. The National Oil Company of Baltimore.

Q. There has been some testimony introduced on the part of the defendants concerning the cutting of prices by your company as well as by other independent companies. Will you explain what your method of making prices is?—A. We are governed by the prevailing Baltimore market price, which we use as a base, and sell generally at that price plus the freight to point of delivery.

Q. What do you mean by saying that you sell generally at that price plus the freight?—A. Because that is our general custom. At some points we have distributing stations.

Q. Where you have a distributing station and deliver oil in
13832 bulk, what is your method of making prices?—A. We are governed by local market conditions.

Q. Who fixes the market price throughout the territory where you do business?—A. The Standard Oil Company.

Q. Where you have a tank station then, where you are competing with the Standard Oil Company, you do not always make your price the Baltimore price with the freight added, do you?—A. We do not.

Q. In those cases you are governed by the local conditions?—A. Necessarily.

Q. But you deliver most of your oil in barrels, do you not?—A. We do.

Q. That is the great bulk of your business?—A. It is.

Q. To what extent have you established tank stations throughout your territory?—A. We have no tank station other than at Baltimore.

Q. How is that?—A. We have no tank station other than at Baltimore. Our only tank station is at Baltimore.

Q. Well, you have stations where you deliver oil in bulk, do you not?—A. In barrels; the oil is shipped in barrels.

Q. To these places where you have tanks?—A. We have no tanks at points other than Baltimore.

Q. How do you deliver in bulk? You spoke about having bulk stations.—A. No; I said distributing stations.

Q. What is a distributing station?—A. A point to which we ship oil from Baltimore in carload lots. The oil is received by the agent in barrels, and is distributed by him in barrels; sometimes in bulk,
because the oil will be drawn from the barrel and put into
13833 ten-gallon or five-gallon cans and delivered by him to the merchants.

Q. Is that the class of cases in which your price is governed by local conditions?—A. Yes.

Q. Then you haven't any tanks anywhere outside of Baltimore?—A. We have not. I want to say that we rent a storage tank at Danville, Virginia.

Q. Is that the only one?—A. That is the only one; and that is within the last sixty days.

Q. Well, you send your oil there in barrels, I assume?—A. In tank cars.

Q. You send it to that tank in tank cars?—A. In tank cars.

Q. Is that the only place where you deliver your oil in tank cars outside of Baltimore?—A. It is—in which oil is received in tank cars.

Q. Yes; received in tank cars. (No response.)

(An adjournment was then taken until Thursday, January 7, 1909, at 10.30 o'clock a. m.)

13834 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Thursday, January 7, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferris, at the above time and place.

Present: On behalf of the petitioner, Mr. Charles B. Morrison. On behalf of the defendants, Mr. F. L. Crawford, Mr. Douglas Campbell.

WILLIAM FEHSENFELD, recalled in behalf of petitioners.

Direct examination resumed by Mr. MORRISON:

Q. Mr. Fehsenfeld, I asked you yesterday what difference the other oil companies made in price between the red oil and the white oil, and you replied "Either one cent per gallon more than the white oil, or half a cent per gallon less than the white." Will you explain what you mean by that answer?—A. The prices charged by the Standard Oil Company for Aladdin oil, which is white in color, is 10½ cents f. o. b. Baltimore. The price which they charge for carnadine red oil is 11½ cents. The price charged for Pratt's astral oil, which is a white oil, is 12 cents. And it depends upon whether the red carnadine oil is Aladdin oil colored or Pratt's astral oil colored, as to the difference in price.

Q. Well, do they sell the red oil higher or lower than they do the white oil of the same quality?

Mr. CRAWFORD. The question is objected to, on the ground that it is not proper rebuttal and opens up new matter, and I
13835 desire to move to strike out the answer to the last previous question on the same ground.

A. I don't know.

Q. Mr. Bruce Robinson testified that the Dixie, at Durham, North Carolina, sold oil at the same price that the Red "C" was selling at. Do you know anything about the prices at Durham while the Dixie was there?—A. I do.

Q. How did you learn about it?—A. Through personal visit to Durham, North Carolina, and also from the reports of our salesmen who were sent there by me to investigate and report to me.

Q. Have you any tank wagon tickets of the various companies that were operating there?—A. I have.

Q. What is the fact in reference to whether the Dixie was selling at the same price there as the Standard and other companies?

Mr. CRAWFORD. I object to the question as calling for testimony based on hearsay, as shown by the witness' previous answers.

A. The price of the Dixie was uniformly less than that of the Standard.

Mr. CRAWFORD. Just a moment. I would like to make a general objection. I move to strike out the answer of the witness, as not being proper rebuttal, and opening up new matter. I make the same objection to all this line. It may be understood, I suppose, that this objection applies, without being repeated.

Mr. MORRISON. Yes.

A. I have a tank wagon ticket of the Dixie Oil Works, under date of August 29, 1904; 10 gallons of Water-White kerosene
13836 oil, at 10½ cents per gallon.

Q. Have you a Standard ticket of about that same time?

Mr. CRAWFORD. I object to the contents of these tickets being read off.

Mr. MORRISON. Well, I will offer the tickets later.

Mr. CRAWFORD. What was that price?

WITNESS. 10½. I have a ticket of the Standard Oil Company under date of July 5, 1904; 40 gallons——

Mr. CAMPBELL. That is objected to. Do you wish the witness to read from these tickets?

Mr. MORRISON. Yes. I will offer them afterwards.

Mr. CRAWFORD. Well, we can't stop it, but we object to the witness testifying further as to the contents of the tickets referred to, they being the best evidence.

Q. Go ahead, Mr. Fehsenfeld.—A.——at 11½ cents.

Q. Have you any other tickets bearing upon that subject?—A. I have two other tickets, one under date of August 26, 1904——

Q. What is that, a Standard?—A. A Standard ticket.

Q. What price does that show?—A. 11½.

Q. What other ticket have you? Have you a Dixie ticket of about that same date?—A. No, sir; I have only one Dixie ticket.

Mr. CRAWFORD. I now move to strike out the previous answer of the witness, on the ground that the tickets are the best evidence; also on the ground that they have not been properly proven.

Papers were marked petitioner's Exhibits 948, 949, 950, and 951, respectively.

Mr. MORRISON. We offer in evidence petitioners' Exhibits
13837 948 to 951, both inclusive.

Mr. CRAWFORD. We object to them, on the ground that they are not competent and have not been properly proven. There is no evidence connecting them with any of the defendants in the case. And on the further ground that they are not proper rebuttal and open up new matter.

Q. Have you anything further on the question of prices at Durham, in the way of records, or anything taken from your books to show what the prices were while the Dixie was there?—A. Our price on August 18, 1904, for Columbia headlight oil was 13½ cents.

Mr. CRAWFORD. Your price was that?

WITNESS. Our price.

Mr. CRAWFORD. At Durham?

WITNESS. At Durham.

Mr. CRAWFORD. What was that date?

WITNESS. August 18, 1904.

Q. What was the Dixie's price?—A. 10½ cents.

Mr. CRAWFORD. For what?

Q. What was the Standard's price?

Mr. CRAWFORD. That was the Dixie's price for what?

WITNESS. For oil.

Mr. CRAWFORD. What kind of oil?

WITNESS. Burning oil.

Mr. CRAWFORD. I know. But there are many kinds of burning oil. Water White?

Mr. MORRISON. Well, just wait until I get through. If you break in here to cross-examine, we will never get through.

Mr. CRAWFORD. I know. But he ought to make it reason-
13838 ably clear.

Q. I am talking now about the same grade of oil. What was the Standard's price at the same time for the same grade of oil?—A. 11½ cents. I would like to add, Mr. Morrison, that the wide difference in price is explained by the fact that our price of 13½ cents included the empty barrel, for which we allowed one dollar; deducting which, made the bulk price of the oil 11½—the same as that of the Standard.

Q. When I ask the price, of course I mean exclusive of the barrel.—A. Yes.

Q. Have you any other date at which you know the prices of the various companies that were selling in Durham while the Dixie was there?—A. I have not, sir.

Q. Did you go down there yourself to investigate prices?—A. I went there to investigate prices and general conditions.

Q. Did you have traveling salesmen that made that town, too?—A. We did.

Q. Did you receive reports from them?—A. I did.

Q. And your statement as to the prices that various companies were selling for in Durham is based upon what?—A. Based upon my own knowledge and from personal visit and from the reports of our traveling salesmen and of our resident agent.

Mr. CRAWFORD. I move to strike out the witness' testimony in this behalf, on the ground that by his own admission it is based upon hearsay.

Q. Mr. Bruce Robinson testified that the Red "C" Oil Company in July, 1905, made a cut to the Motor Car Company in Baltimore of half a cent a gallon, and secured the business on gasolene, and
13839 that they had had it ever since. What is the fact about that?—A. We are selling the Motor Car Company, and have sold them for several years, and always at the prevailing market price.

Q. Did you make any cut to them?—A. We did not.

Q. Did they at any time attempt to take out any discount or anything from the regular market price on any order that you sold to them?—A. They tendered us, on one occasion, checks in settlement of a monthly account, deducting 2 per cent discount for cash, which we refused to allow; and they subsequently returned the check with another check covering the amount of the discount they had deducted.

Q. Mr. Robinson also testified that the Red "C" Oil Company made a cut of half a cent a gallon on gasolene to J. Charles Raspe, of Raspburg, Maryland. It is called in this record "Riceburg."—A. It is "R-a-s-p-b-u-r-g."

Q. Raspe was doing business at Raspburg, was he not, and not at Riceburg?—A. Yes, sir; at Raspburg.

Q. Well, what do you say about that?—A. We sold him at the prevailing tank-wagon market price at the same time and the same price as we charged to our customers in general.

Q. Did you make him a cut of half a cent a gallon about October 1, 1906?—A. Raspburg is in Baltimore County and may have been just beyond the end of our northern route. Wherever our tank wagons go, whether north, east, south, or west of Baltimore, including Baltimore city, Baltimore city prices prevail. Beyond the line where our wagons stop the Standard Oil Company may charge a higher price, and if our tank-wagon delivery be made to a merchant on his request or solicitation it will be at the Baltimore market price.

13840 Q. So that, as I understand you, in this particular case the sale may have been half a cent below the Standard Oil Company's price?—A. It may have been.

Q. And that is because of your theory of making prices—that wherever your tank wagons reach you give them the Baltimore price—whatever it is?—A. We do.

Q. Now, did you at this time or any other time give Raspe any other or different price than the Baltimore price?—A. We did not.

Q. And you reached him, if you reached him at all, by your tank-wagon service, did you?—A. We did.

Q. Is it not true that there are many cases, perhaps, of that kind where your Baltimore price, with the freight added, if freight has to be paid, may be lower or higher than the Standard's price at that particular point?—A. Well, in the case of Raspburg, the delivery

is always made from tank wagon, and the tank wagon starts from Highlandtown.

Q. Yes; and I understand you that wherever you reach by tank wagon, where your tank-wagon service reaches a customer, that he gets the Baltimore price?—A. That is true.

Q. Now, I am going beyond that and asking you a general question, whether or not it is not true that your price is based on the Baltimore price, and where you have to pay freight to get your oil to a customer that that customer gets the oil at the Baltimore price, with the freight added, and that that price so made may be higher or lower than the Standard's price in that particular town. Is that or is that not right?

Mr. CRAWFORD. I object to the question as calling for testi-
13841 mony which is not proper rebuttal nor in denial of any matter brought out upon the defense, and as opening up new matter.

A. It is.

Q. Mr. Robinson testifies that as late as the spring of 1908 the Red "C" Oil Company cut the prices at Solley, Maryland. As I understand, Solley is a suburb of Baltimore. And he says that this was about the time that you were testifying over in Washington in this case. What do you say about that?—A. I presume that the same condition applies to Solley as at Raspburg. Solley is a point on the Annapolis road leading out of Baltimore. We sell at Brooklyn and at Curtis Bay, in Arundel County. Solley is also in Arundel County.

Q. Did you reach Solley with your tank-wagon service?—A. Yes.

Q. What price did you make to the dealers at Solley?—A. The Baltimore and suburban market price.

Q. Did you make them any other or different price?—A. No.

Q. Do you know whether that was higher or lower than the Standard was charging in Solley for the same grade of goods?—A. I do not know.

Q. You paid no attention to that matter, as I understand you?—A. Paid no attention.

Q. Mr. Robinson also testifies that the Red "C" Oil Company made a cut to Robert Corbett, of Pikesville, Maryland, which, I believe, is a suburb of Baltimore, but he does not fix any date. What do you say about prices that you made to Corbett, at Pikesville?—

A. We had been selling Robert Corbett at the prevailing
13842 Baltimore market price for years. The Standard Oil Company and ourselves are now selling him.

Q. And your trade is divided?—A. The trade is divided.

Q. Did you make any cut to him?—A. Never.

Q. What price did you charge him?—A. The prevailing tank-wagon price.

Q. Did you reach him by your tank wagons?—A. Yes, sir.

Q. Has he got any drum that was furnished him by anybody?—A. When we solicited his trade we found that the Standard Oil Company had loaned him a tank wagon which he used for peddling to the

consumer, and that the Standard Oil Company had also loaned him a drum. The tank wagon was returned on request of the Standard Oil Company, by Robert Corbett, about two years ago. He has the drum still on hand, and requested to know if we would furnish him another drum in the event that the Standard took that one away. We declined to do so.

Mr. CRAWFORD. I move to strike out the testimony of the witness in regard to the drum and tank, as obviously based upon hearsay and not upon personal knowledge.

Q. You haven't furnished him any tank, then?—A. We furnished him one tank, for which he paid.

Q. But you have not furnished him any free, nor loaned him any?—A. We have not.

Q. And when you first commenced to sell him he was a customer of the Standard, was he?—A. He was. He took affront at the Standard Oil Company, and we secured the larger portion of his trade by reason of the fact of the Standard Oil Company selling to Robert Corbett's customers (the customers) at the same price as they charged to Robert Corbett.

13843 Mr. CRAWFORD. I object to the testimony in regard to the affront and in regard to the reasons for the change, because the same is obviously hearsay. And I move to strike out the entire answer as not being rebuttal, but opening up new matter.

Q. About what proportion of Corbett's trade have you now, and what proportion has the Standard, about?—A. We have, perhaps, three-fifths and the Standard two-fifths.

Q. Did you get his trade by any cut price or by holding out any inducements to him of any kind?—A. We did not.

Q. Mr. Robinson testifies, and other witnesses testify, that the Red "C" Oil Company gave away tanks to customers to induce them to buy oil, and that they were sixty-gallon tanks, and that they were worth about $4.50; and to that extent, he says, it amounted to a cut. Will you explain what there is and all there is to this tank question, so far as it pertains to your company and to other oil companies?—A. We have not given away tanks, but we have loaned storage tanks (30-gallon, 60-gallon, and 110-gallon capacity) to customers who purchased of us. That was a practice followed by the Standard Oil Company and by the Crew-Levick Company and by ourselves. It was discontinued, perhaps a year or more ago.

Q. It was discontinued?—A. Discontinued.

Mr. CRAWFORD. I move to strike out the testimony in regard to the Standard Oil Company as being obviously hearsay and not based upon personal knowledge.

Q. How long, to your knowledge, has the Standard Oil Company been loaning tanks to customers?—A. Fifteen years or more.

Mr. CRAWFORD. I repeat the same motion, on the same grounds.

13844 Q. You have been connected with the Red "C" Oil Company for that many years, have you?—A. 22 years.

Q. Were you ever on the road?—A. I was, as a traveling salesman.

Q. Do you still go onto the road some?—A. I do.

Q. You are familiar with the trade, are you—the oil trade of your company and of the Standard, as you came in contact with it in your business?—A. I am.

Q. Is that the way you learned about these tanks?

Mr. CRAWFORD. I object to that question as calling palpably for hearsay testimony.

A. The tanks referred to were loaned in the city of Baltimore, and I learned of their having been loaned through my calling on the trade in Baltimore City.

Mr. CRAWFORD. By what they told you?

WITNESS. By what they told me and by what I saw. It was a universal practice among all the oil companies. The Eagle Oil Company——

Mr. CRAWFORD. I move to strike out the witness' answer in so far at least as it relates to the Standard Oil Company or the Eagle Oil Company, as being clearly based upon hearsay.

Mr. MORRISON. It has the same basis for it that every witness you put on the stand had for his testimony in this case.

Mr. CRAWFORD. Excuse me, we guarded our witnesses by stating that we did not offer their testimony to prove the fact, but to
13845 prove the motive of price reductions, and you do not make any such restriction.

Mr. MORRISON. Well, the evidence goes in, and is competent for whatever it is competent and for whatever it proves.

Mr. CRAWFORD. If this evidence goes in, it is absolutely incompetent and proves nothing, as you give it, by any rule of law that was ever heard of by any court in the land or any other land.

Mr. MORRISON. Now, is this the decision of a court of last resort?

Mr. CRAWFORD. Well, it is good law, and it will be.

Q. Now, Mr. Wilmer testifies that when the Red "C" Oil Company went into Yorkville, South Carolina, it made a cut of half a cent a gallon under the tank-wagon price of the Standard Oil Company; that the first oil it shipped in was Water White, but the next time you substituted Prime White, which was worth a cent a gallon less; and that you were selling both kinds of oil under the same brand. What have you to say about any cut made by the Red "C" in Yorkville, South Carolina?—A. We made no cut. The first carload shipment sold to Yorkville was at a price netting the merchant one-quarter of a cent per gallon above the prevailing tank-wagon price. We sold at 14½ less the value of the empty barrel (75 cents). The Standard Oil Company's price was 12½ cents. Either while our car was en route or shortly after it arrived the Standard Oil Company reduced their price from 12½ to 11½.

Q. What was the basis of this price that was made by you on the very first shipment which you made into Yorkville?—A. The Baltimore market price with freight added.

13846 Q. Have you continued to ship into that town since?—A. I can give you the dates of the shipments from memoranda that I have here.

Q. You may give the dates of all the shipments that you made in there.—A. I gave the dates yesterday, Mr. Morrison, of the several shipments.

Q. Into Yorkville?—A. Into Yorkville.

Q. Did you make any shipment into Yorkville at any other or different price than the Baltimore price with the freight added?—A. We did.

Q. Just explain that.—A. We made a price of 11½ cents, to meet the reduced price of the Standard Oil Company.

Q. Was the 11½-cent price lower or higher than the price at which the Standard was selling at the same time?—A. It was the same price.

Q. You reduced your price there, then, as I understand you, to meet that?—A. We met the Standard Oil Company's price. Then they made a further cut, to 10½ cents.

Q. Did you meet that cut?—A. Only in part, and then withdrew.

Mr. CRAWFORD. I move to strike out the foregoing answer of the witness, on the ground that it covers new matter and is not proper rebuttal.

Q. Did you then retire from the trade in Yorkville?—A. We did.

Q. For what reason?—A. For the reason that the business was unprofitable, and we declined to make a shipment at a price netting the merchant 10½ cents, the same as the prevailing tank-wagon price.

Q. Did you have any agents or commission men at York-
13847 ville?—A. Carroll Brothers.

Q. And the matter was handled by correspondence between you and them, wasn't it?—A. Between Carroll Brothers and ourselves.

Q. And you have the correspondence with you, haven't you?—A. I have.

Q. Mr. Parsells testified to cuts that were made by the Columbia Oil Company. He mentioned one to J. H. Acton, of Anacostia, District of Columbia, I think. He stated that Acton had been buying from the Standard for years, and that the Columbia made a cut of half a cent below the Standard Oil Company's price on gasolene. What have you to say about that?—A. I know of no instance in which the Columbia Oil Company has cut a price.

Q. What is Anacostia, and where is it?—A. It is a suburb of Washington.

Q. And the Columbia Oil Company is doing business in Washington, isn't it?—A. In Washington.

Q. Are you connected with that company?—A. I am president of that company.

Q. Do you know what price was made at Anacostia; that is, what the base of your price was?—A. It is the same price that we sell to the trade at Washington.

Q. Is it used by your tank wagons?—A. It is.

Q. The tank wagons that serve Washington?—A. Yes; Washington and suburbs.

Q. Do you know whether or not that price (the Washington price) was lower or higher at Anacostia than the Standard's price?—

A. The Washington price has prevailed at Anacostia for
13848 years.

Q. Do you mean by the Columbia, or by the Standard?—A. By both.

Q. Do you know whether any cut was made below the Washington price to Acton or anybody else in Anacostia?—A. It was not.

Q. Is your Washington price and your Baltimore price the same?—A. I think not.

Q. What is the base of your Washington price and the towns round about Washington that are served by your tank-wagon service?—A. As best I know, the Washington tank-wagon price prevails to all points reached by the Columbia Oil Company.

Q. Mr. Parsells states that the Columbia made a cut to P. B. Nourse, of Falls Church, Virginia. He does not remember the price, but says that the price was a cent and a half below the Standard Oil Company's Washington price.—A. I presume that the same conditions prevailed there as I explained with regard to Baltimore; that is to say, that wherever our tank wagons reach the base price prevails.

Q. That is, the Washington base price?—A. The Washington base price.

Q. Upon what principle or theory is your Washington base price fixed? On the Standard's price there, or what is it?—A. On the local conditions, the Standard Oil Company's price.

Q. Local conditions in Washington?—A. Yes.

Q. Without going into all these towns that witnesses have talked about, I want to ask you this question: Is it or is it not true that the price to all these towns surrounding Washington, which are
13849 reached by your Washington tank-wagon delivery, is the same as the Washington price?—A. It is.

Q. Have there been, to your knowledge, any deviations from that?—A. No.

Q. Would you know about it if there had been?—A. Most likely.

Q. Are you consulted about prices that shall be charged there at Washington?—A. I am.

Q. Do you know how the Standard makes its price to towns surrounding Washington?—A. I do not.

Q. Do you know where Ballston, Virginia, is?—A. Yes, sir; probably from three to five miles from Rosslyn, Virginia, or probably three to five miles from Georgetown, Virginia.

Q. Is that reached by your tank-wagon service?—A. It is.

Q. What price does that take?—A. The Washington price.

Q. Do you know whether you have customers there by the name of J. W. Sutton and W. F. Collings?—A. I do not.

Q. I think you said that you didn't know what the Standard's price was in these towns surrounding Washington.—A. I did not know.

Q. Mr. James R. Lyles, a tank-wagon driver for the Standard Oil Company in Alexandria, says that he travels around Alexandria and into Del Rey, St. Elmo, Barcroft, Bailey's Crossroads, Annandale, Linconia, and Theological Seminary. He says that in April, 1905, the Columbia Oil Company first came to Alexandria and reduced the price below that which the Standard was charging; that the Standard was selling at 8½ and 9 cents, according to grade, and gasoline at 10½ cents a gallon, and that the Columbia cut the price of oil
13850 to 7½ cents, and gasoline to 10 cents a gallon, which was a half-cent cut. What do you say about the price at these towns that I have mentioned?—A. I know nothing of the price at those towns.

Q. Do you know what price the Columbia made at those towns?—A. The Washington price.

Q. And you don't know whether that was a cut under the Standard, a lower price than the Standard, or whether it was a higher price?—A. I do not.

Q. In marketing your oil to these stations around Washington, did you pay any attention to what the Standard Oil Company's price was in those particular towns, or did you sell in these towns reached by your tank-wagon service, at the Washington price, whatever that was?—A. Sold at the Washington price. I would like to make a general statement.

Q. Go ahead.—A. With reference to the Red "C" Company, of Baltimore, for a long time we sold our oil from tank wagon in Baltimore city only. I found that the Standard Oil Company were charging a considerably higher price in the suburbs than in Baltimore city, and I desired to avail of a better price in order to equalize, and arranged to extend our tank-wagon delivery system into the suburbs, charging a higher price than in Baltimore city; but wherever our wagons went, the Standard Oil Company dropped the price to the city price. I recall that our wagons were extended as far as Elk Ridge, Maryland, between Baltimore and Washington, about ten miles distant from Baltimore, to which the Baltimore price prevailed.

The moment we extended our tank-wagon delivery system
13851 there, at Wellhams, Maryland, which is just two miles from Elk Ridge, the Standard Oil Company's price was 10½ cents per gallon. We refused to go to Wellhams, but one of the merchants at Wellhams, at least, sent barrels from there to Elk Ridge and had our tank-wagon driver fill those barrels for him at the Elk Ridge price, thus saving about 3 cents per gallon; and the very conditions of the trade made it necessary that we establish a uniform custom of charging the tank-wagon price to all points reached by our tank wagons from Baltimore city.

Mr. CRAWFORD. I move to strike out so much of the answer of the witness as relates to prices made or claimed to have been made by

the Standard Oil Company at any time or place, as being based upon hearsay, as appears from the witness's answer. I further move to strike out the entire answer on the ground that it is not proper rebuttal, does not answer anything introduced by the defence, and opens up new matter.

13852 Q. When you say "at the tank-wagon price" you mean, I assume, the Baltimore tank-wagon price.—A. The Baltimore tank-wagon price. All of our tank wagons stable and load at the same place.

Mr. CRAWFORD. I repeat the same motion on the same grounds.

Q. Now, as to the towns that are suburbs of Washington and reached by your Washington tank-wagon service, does the same rule prevail there; that is, that they take the Washington price, which is the Standard Oil Company's price and your price in Washington?

Mr. CRAWFORD. I object to the question on the ground that it calls for an answer which is not proper rebuttal and opens up new matter.

A. It does.

Q. Where is your tank-wagon station that supplies Washington?—A. At Rosslyn, Virginia, directly across the Potomac River from Washington or from West Washington—Georgetown.

Q. You did not fully answer my question about these towns around Washington and Alexandria that I asked you about—Del Ray; St. Elmo, Barcroft, Bailey's Crossroads, and others. Are those reached by your tank-wagon service from Washington?—A. I think so.

Q. Mr. William A. Barrett testified to the effect that the Red "C" Company shipped to the Smith River Chair Company and Bassetts Furniture Company, at Bassetts, a car of benzine about December 8th or 9th, 1906, selling it at 13½ cents a gallon f. o. b. Bassetts, and paid the freight on the returned empty drums; that the Stand-

13853 ard at that time had a contract with these concerns for benzine at 14 cents a gallon f. o. b. Bassetts, and the customers had to pay the freight on the returned drums; and that the trade was lost by the Standard on account of this cut. Now, can you explain that situation, Mr. Fehsenfeld? Have you any record here that will aid you in explaining it?—A. I have. [Referring to memorandum.] We sold at Baltimore price, freight added.

Q. Have you a record of your shipments there?—A. I have.

Q. You may give it.—A. October 30, 1906.

Q. Was that the only shipment you made there?—A. The only one of which I have any record. I think it is the shipment referred to by Mr. Barrett.

Q. Well, there was Bassetts Furniture Company, 8 drums; the Smith River Chair Company, 10 drums; the American Furniture Company, Martinsville, Virginia, 4 drums; J. W. Miles, 2 barrels Columbia head-light oil; Smith River Mercantile Company, 2 barrels Columbia head-light; Bassetts Mercantile Company, 5 barrels Columbia head-light; Messrs. H. & T. Penn, Bassetts, Virginia, 1 barrel of Columbia head-light. Was that all in one shipment?—A. It was.

Q. One car?—A. It was.

Q. Do you know what the freight rate was and what the Baltimore price was at that time?—A. The Baltimore market price was 11½ cents per gallon.

Q. For what?—A. For benzine. The freight rate was equivalent to 2 cents per gallon. 11½ and 2 cents freight makes 13½ cents delivered.

Q. That is the price at which you sold it there, is it?—A. That is the price at which we sold it.

13854 Q. How about these other commodities?—A. Columbia headlight oil—our price at the time was 11 cents, freight added, 2 cents per gallon, which made 13.

Q. Do you know whether that was lower than the Standard were selling at the same time in that town?—A. I do not.

Q. Do you know anything about that? There was something said about your paying freight on returned drums. Do you do that?—A. We do.

Q. And why do you do it?—A. Because the Standard Oil Company made a delivered price from tank wagon delivery, and we pay the freight on the returned drum; we absorb that.

Q. That puts the purchaser, then, on an equal footing, so far as the delivery is concerned?—A. It does.

Q. Mr. Blackwelder testifies that the Red "C" Oil Company sold a carload of 60 barrels of Sunbeam oil in Charlotte, North Carolina, at half a cent cut under the Standard's market price for Diamond White headlight, which is supposed to be an oil of the same test. He says that, as he recalls it, the price on Diamond White at that time was 12 cents, and the Red "C" sold the Sunbeam at 11½ cents; and that this was in January, 1904. He further states that at the same time and place and in the same months where he says presumably the Red "C" made the same price as before, he gave an additional 10 cents for empty barrels, which constituted a further cut. As he figures it out, the Standard's price was 11 cents and the Red "C" was 10.6 cents a gallon.—A. When we make a shipment of a carload of oil in barrels the merchant must haul the oil from the depot to his store, pump the contents from the barrel into his storage tank,

13855 and haul the empty barrel from his store back to the station. We estimate that the cost to the merchant is 25 cents per barrel, or about one-half cent per gallon for that service. If there was a cut, it is explained in that way.

Q. Well, you have to do that, do you not, as you are selling in barrels and drums in competition with the Standard that has the tank-wagon delivery service?—A. To equalize the cost.

Q. Do you know what you sold that carload of oil for in Charlotte and what the freight was?—A. At what date?

Q. That was in January, 1904.—A. January 27, 1904, we sold at 13½ cents.

Q. What price was that, or how did you make that price?—A. That was in barrels.

Mr. CRAWFORD. Does that mean less barrels?

WITNESS. That included the barrels.

Mr. CRAWFORD. That includes the barrels?

Mr. MORRISON. Yes.

Q. What would that make it as the net price?—A. That would make the net price 11¼.

Q. Was that your Baltimore price with the freight added?—A. I haven't a record, sir, of the Baltimore price as to that shipment.

Q. Mr. Blackwelder says that the Red "C" made a cut on gasolene to the merchants of Fort Mill, South Carolina, in October, 1905; that the Red "C" offered gasolene shipped from Norfolk, Virginia, he thinks, at about 13 cents f. o. b. Norfolk, against his price of 16½ cents f. o. b. Charlotte; that the freight between Norfolk
13856 and Fort Mill was between 3 and 4 cents a gallon, and from Charlotte to Fort Mill, 17 cents per hundred, making, as he says, a cut of about 2½ cents per gallon.—A. We sold no merchants at Fort Mill, South Carolina.

Q. Have you examined your records to see if you made any sale there?—A. I have.

Q. And did you make any in the month of October, 1905?—A. We did not.

Q. Did you at any time anywheres near that?—A. We have sold at Fort Mill, South Carolina, but not in recent years.

Q. Well, this is supposed to be in October, 1905. That is the date that Mr. Blackwelder gives.—A. I could find no record of such sale.

Q. Did you find any record of any sales into that town in the year 1905, at all, or in the year 1906?—A. I did not.

Q. Did you make a search for it?—A. Yes.

Q. If a shipment had been made into that town you would have a record of it, wouldn't you?—A. We would.

Q. And you could find that record, could you not?—A. I could.

Q. He says the Red "C" offered gasolene shipped from Norfolk, Virginia, he thinks, at about 13 cents f. o. b. Norfolk, against this price of 16½ cents f. o. b. Charlotte.—A. My recollection is that that was the Norfolk price at the time.

Q. If gasolene was shipped in there from Norfolk, Virginia, by your company would you have a record of it?—A. Yes.

Q. That would go onto your books, would it not?—A. It would.

Q. At Baltimore?—A. At Baltimore.

Q. Mr. Barksdale, a salesman for the Standard Oil Company, testified that to the best of his recollection the Red "C"
13857 Oil Company made a sale through J. D. Austin to the Camden Grocery Company, Camden, South Carolina, in January, 1906, of 60 barrels of oil, at 12 cents per gallon; that the Standard Oil Company's price at that time, to the best of his recollection, was 12½ cents, making a cut of a half cent, and that by means of this cut the Red "C" got that business. What have you to say about that?—A. We sold the Camden Grocery Company, or we shipped the Camden Grocery Company a carload of oil December 27, 1905, 60 barrels of Sunbeam oil, at 13½ cents per gallon. The Baltimore market price

at the time was 10¾; freight rate, 35 cents per hundred weight; $1.40 per barrel; 2¾ cents per gallon. 10¾ plus 2¾ = 13½, the price at which the car was sold.

Mr. CRAWFORD. That was the price, including barrels?

WITNESS. Including barrels.

Mr. CRAWFORD. What was it net?

WITNESS. About 11½.

Q. Now, you are speaking about a shipment of December 27. This witness spoke about a shipment that he thought was in January, 1906. Did you make any shipment in January, 1906?—A. We did not.

Q. And you have given the nearest shipment, have you, to that date?—A. Yes, sir.

Q. Up to the month of January?—A. Yes.

Mr. CRAWFORD. If the shipment was made December 27 it would get there in January?

WITNESS. It would arrive in January. That was the shipment very likely referred to.

Q. Would arrive there in January.

13858 Mr. CRAWFORD. The same one.

Q. Mr. Barksdale also said that his record shows that the Red "C" Oil Company made a cut of a cent and a quarter a gallon on a car of Sunbeam oil, at Marion, South Carolina, in March, 1906.—A. We shipped, March 20, 1906, a car to Marion, South Carolina, of Sunbeam oil, at 11¾ cents, with a rate of 75 cents each for empty barrels. Freight rate to Mullins was 35 cents per hundred; 2¾ cents per gallon. Baltimore market price on Sunbeam oil was 10¾ cents. Deducting for the value of the empty barrel, and adding the freight, would make the delivery price 11¾ cents.

Q. As I understand you, it was sold at your Baltimore price?—A. Baltimore price.

Q. With freight added?—A. Freight added.

Q. And barrel deducted?—A. That is right.

Mr. CRAWFORD. What was the net price?

WITNESS. 11¾.

Q. Do you know whether that was higher or lower than the Standard was selling in that town at the same time?—A. I do not.

Q. You paid no attention to that?—A. No.

Q. You have invoices for these shipments that we are talking about, have you—copies made from your books here?—A. I have.

Q. Mr. Barksdale also testified that you made a cut on deodorized gasoline at Marion, South Carolina, of practically 1¼ cents, but he gives no dates. He compares your price with his deliveries from Wilmington. What have you to say about that?—A. As a general rule, we are not informed of what the Standard Oil Com-

13859 pany's prices are at various points, particularly at Wilmington, North Carolina, where we do no business. We would

have no means of being informed of the price, unless, for the sake of being informed, we would make investigation.

Q. Well, how about this deodorized gasoline? Do you know at what price you sold gasoline in Marion, South Carolina?—A. I do not.

Q. Do you know whether or not it was sold at the Baltimore price with the freight added?—A. I do not know that there was any sale made, Mr. Morrison.

Q. How is that?—A. I do not know that there was any sale made of gasoline.

Q. There not being any date given by the witness, you did not look the matter up, is that it?—A. No.

Q. Mr. Robert R. Jones, a salesman for the Standard Oil Company, testified that the Red "C" sold a carload in Randleman, North Carolina, in 1906, of Sunbeam oil at 12½ cents, delivered, allowing 1.00 f. o. b. Randleman for empty packages, thus making a net price of 10½ cents bulk. The Standard Oil tank wagon price at the time, he says, was 11 cents; that the Red "C" also allowed sixty days' time, and agreed to stand the leakage for sixty days, or a discount of one per cent if bill was paid in ten days. Do you know anything about that transaction with Randleman?—A. We shipped a carload on January 22, 1906, to Randleman at 13 cents per gallon, the barrel included, which, figured at the Baltimore market price, with freight added——

Mr. CRAWFORD. What did that make the net price to Randleman?

13860 The WITNESS. About 11 cents.

Q. Have you got any invoice?—A. I have a duplicate invoice, January 22, 1906, 10 barrels Sunbeam safety oil.

Mr. CRAWFORD. One moment. I object to the witness reading from the invoice.

Mr. MORRISON. I don't care for that.

Mr. CRAWFORD. I move to strike out the answer as to the contents of the invoice.

Mr. MORRISON. Yes.

Q. You have invoices or copies of invoices here of all these transactions about which you have testified, taken from your books, have you?—A. I have.

Mr. MORRISON. We will not lumber the record up by offering them in evidence, but we will submit them to you gentlemen if you want to see them.

Q. Now, is that the only shipment you made about that time?—A. The only one of which I have any record.

Q. Do you know what the price was in Baltimore at that time and what the freight rate was?—A. To Mr. Randleman?

Q. Yes.—A. Yes.

Q. You may give that.—A. Baltimore market price on Sunbeam oil, 5-barrel lots, 10½ cents per gallon. Freight rate from Baltimore to Randleman, 32 cents per hundred, $1.28 per barrel, 2½ cents per

gallon, which, added to 10½ cents, makes 13 cents per gallon—the price at which oil was sold; allowing a dollar net for the return of the empty barrels, reduced the bulk cost to 11 cents.

Q. Mr. Robert R. Jones says that the Red "C" sold a car-
13861 load of naphtha in Thomasville, North Carolina, at 14 cents delivered, and paid the drayage from the station to the manufacturing plant; that the Standard Oil Company's price at the time was 14½ cents, delivered from tank wagon. Have you got any record of that shipment?—A. I have no record of shipment; I have a record of the transaction. A carload of benzine was sold at 14 cents per gallon, which was the price at High Point, in North Carolina, seven miles distant from Thomasville. The carload was never shipped, because the orders were countermanded.

Q. Why did you make the price at High Point?—A. We did not make the price—I mentioned the price at High Point because that was the Standard Oil Company's price at High Point for tank wagon delivery.

Q. And you sold at that price there?—A. We sold at Thomasville, seven miles distant from High Point.

Q. As I understand you, the orders were countermanded and the car was never delivered?—A. That is right.

Q. Mr. Jones also testifies that the Red "C" sold at Madison, North Carolina, for 13¾ cents per gallon, and allowed 95 cents for the empty packages f. o. b. Madison; and that the Standard Oil Company's price was 14 cents; and that the Standard at that time allowed 75 cents for empty barrels. What have you got to say about that? Have you a record of that transaction?—A. We shipped a carload of oil January 9, 1907, to Madison, North Carolina, at 13 cents per gallon, including the barrel. The Baltimore market price
was 10¾ cents per gallon; freight from Baltimore to Madison
13862 28 cents per hundred, $1.12 per barrel, 2¼ cents per gallon, which freight added to the Baltimore market price makes 13 cents, for which the oil was sold.

Mr. CRAWFORD. What was it net at Madison?

WITNESS. About 11 cents.

Q. How about allowing 95 cents for the empty barrel? Was that the usual and customary price?—A. That was approximately, if not actually, true. The price may have been 75, or may have been a dollar.

Q. He says that in December, 1906, the Red "C" made a sale of Columbia Headlight oil to McGhee & Company, at Madison, at a net cut of 1 cent per gallon. He does not remember the exact price at which oil was selling at that time; and that you guaranteed the oil to be as good as the Aladdin; that McGhee & Company did not take the entire car, but distributed a portion of it to other merchants; that the Standard lost the business in both of these cases at Madison on account of this cut which you made. What do you say about this latter transaction?—A. I seem to have no record of that, Mr. Morrison.

Q. Mr. Jones testifies that the Red "C" sold a carload of oil in

Elkin, North Carolina, to Atkinson & Company; that the prices were 13 cents for Sunbeam and 14 cents for Columbia Headlight, both delivered; that the Standard's price previous to this sale was 13¾ and 14¾ delivered on the same basis; that with this cut of ¾ of a cent the Red "C" got this business. Have you a record of that transaction?—A. Yes, sir.

Q. Well, what are the facts about it?—A. The oil was sold at 13 and 14 cents for Sunbeam and Columbia Headlight, respec-
13863 tively.

Q. And what price was that?—A. Baltimore market price, freight added.

Q. What was the freight? What was the Baltimore price and what was the freight?—A. The Baltimore price on Sunbeam oil in 5 barrel lots was 10½ cents. The price on the Columbia Headlight oil in single barrels was 11 cents. Freight from Baltimore to Elkin was 36½ cents per one hundred, $1.46 per barrel, or 3 cents per gallon, making the prices 13 and 14 delivered.

Q. Do you know whether it was higher or lower than the Standard was selling at?—A. No, sir; I do not.

Q. Mr. Robert O. Jones testified that the Red "C" sold a carload of oil at 13 cents per gallon, delivered at Northwilkesboro, North Carolina, to the F. D. Forrester Company; that this oil was guaranteed to be as good as their Aladdin brand, which they were selling at that time for 14 cents; that the Red "C" got the business, and later sold these parties another car at the same price, net, 30 to 60 days. It does not appear from my notes that Mr. Jones gave any date of that shipment.—A. We shipped to F. D. Forrester & Company, Northwilkesboro, North Carolina, a car on November 23, 1907; 50 barrels Columbia Headlight oil, 13½; 10 barrels Garnet Red, 14 cents.

Q. What was your Baltimore price and what was your freight, and what price did that make the oil to the customer delivered?—A. The Baltimore market price on Columbia Headlight oil was 11 cents in single barrel lots; the freight from Northwilkesboro was 36½, $1.46 per barrel, or a fraction less than 3 cents per gallon, which, added to the 11 cents, made 14 cents delivered.

13864 Mr. CRAWFORD. I move to strike out the last two answers, since it appears from the date given by the witness the transaction he refers to is not that referred to by the witness Jones; that, in connection with his other testimony, being clearly assigned to the last part of 1906; and, therefore, this testimony not being rebuttal and opening up new matter.

Mr. MORRISON. We assume that we are referring to the same shipment——

Mr. CRAWFORD. They are a year apart, Mr. Morrison.

Q. Was there any shipment made to Forrester & Company by your company a year previously?—A. I think that was the only shipment made.

Q. Did you examine your books to see about shipments to the F. D. Forrester Company?—A. I did.

Q. Did you find any others than those you have given?—A. Not to my recollection.

Q. Is there anything about this shipment that pertains to single barrel customers as compared with carload customers?—A. Well, the Baltimore market price on Columbia Headlight oil to-day is 10¼ cents; on the Aladdin oil, the same price. On lots of 5 barrels there is usually a reduction of ¼ of a cent per gallon from that price.

Q. This was a carload shipment, was it?—A. This was a carload shipment, yes.

Q. To Jones?—A. Yes.

Q. So that it wouldn't take the single-barrel rate?—A. No.

Q. Mr. J. Flem Johnson, a salesman for the Standard Oil Company, stated in quite general terms that the Red "C" made cuts in prices in the Carolinas. He remembered several cuts
13865 made in 1903 at Lincolntown, North Carolina. He did not give the amount of the cut, nor the prevailing price, nor the names of the parties, nor the dates. He also said that the Red "C" made cuts in December, 1903, at Chester, South Carolina, to Wylie & Company. Have you made an examination of the records of your company to find out about your shipments into that territory and into these places that he names?—A. Yes, sir.

Q. What is the record of that?—A. With regard to Wylie & Company, we sold them on August 30, 1902, and June 12, 1903, a barrel of lubricating oil each time.

Q. A single barrel?—A. A single barrel. We sold them no burning oil. With regard to Lincolntown, North Carolina, the car to Lincolntown, North Carolina, was sold to merchants of Lincolntown and vicinity, within a radius of about four miles.

Q. At what price? Take up Lincolntown first.—A. On January 28, 1903, 7 barrels of Columbia Headlight oil, 14 cents.

Q. Well, how did that compare with the Baltimore price?—A. The Baltimore price, freight added, is the best I remember.

Q. That was the only shipment that you made into Lincolntown?—A. Then April 1, 1903.

Q. At what price?—A. One-half cent per gallon less, there having been a decline in the meantime.

Mr. CRAWFORD. Less than what?

WITNESS. Less than the first shipment.

Q. Well, was that the Baltimore price with the freight added?—A. As best I remember, yes.

Mr. CRAWFORD. Those are gross prices, are they?

13866 WITNESS. Yes.

Mr. CRAWFORD. Including the barrels?

WITNESS. Including the barrels.

Q. Well, when you take out the barrel, what does it leave your price?—A. It reduces the price approximately 2 cents per gallon.

Q. Are those all the shipments you made into Lincolntown?—A. As best I know; yes.

Q. Have you examined your records to find out?—A. Yes, sir.

Q. Now, about these other shipments here that were made; there was a barrel of Columbia Red engine oil, and also a barrel of Sterling engine oil. Those were the first shipments that you spoke about, but you didn't give the price.—A. They were to Chester, South Carolina, and bore no relation to Mr. Johnson's testimony, except that we sold no burning oil to Joseph Wylie & Company during those two years.

Q. During the years that Mr. Johnson testified to?—A. Referred to; yes.

Q. He says that you made cuts in 1903, at Chester, South Carolina, to Wylie & Company.—A. We did not.

Q. Did you make any sales?—A. To Joseph Wylie & Company? No.

Q. He says "Wylie & Company." Is that the only——

A. That is the same one.

Q. He says also that he remembers a cut made in January, 1904, of a half a cent, at Gaffney, South Carolina, and a cut to Charles Whitmarsh, of Whitmire?—A. Our books show no record of having sold Charles Tidmarsh at Whitmire.

Q. Would your books show it if you had made such sale?—A. Yes.

13867 Q. You say you made no sale to Charles Whitmarsh?—A. We made no sale to him.

Q. How about the other one—Charles Tidmarsh, of Whitmire?—A. Charles Tidmarsh, of Whitmire, South Carolina, we made no sale to him during 1902 or 1903.

Q. Did you make any sale to W. J. Wilkins & Company, of Gaffney, South Carolina?—A. We did; 3 barrels of Sunbeam oil, 15¼, including the barrel.

Q. That would bring it down to 13¼?—A. Bring it down to 13¼.

Q. And what was your market price in Baltimore at that time in less than 5-gallon lots?—A. You mean in 5-barrel lots, Mr. Morrison?

Q. Yes.—A. 11¼; freight rate $1.88 per barrel, 3¾ cents per gallon.

Mr. CRAWFORD. That made the price what, in Gaffney?

WITNESS. That made the price 15¼, delivered.

Mr. CRAWFORD. 13½ net?

WITNESS. 13¼ net.

Mr. CRAWFORD. 13¼ net?

WITNESS. Yes.

Q. That is the only sale you made at about that time or during that year to Wilkins & Company, is it?—A. Yes.

Q. How many barrels do you say there were in that lot?—A. 3 barrels. That was a portion of a carload.

Q. I think you said you made no sale to this man Tidmarsh at all?—A. Not during 1902 or 1903—the period covered by the testimony.

Q. Something was also said by this witness, without giving names or dates, about a cut at Mooresville, North Carolina,

13868 about four or five years ago. Have you examined your records to see whether you made any shipments into that city at about that time?—A. We sold on February 17, 1905, to F. W. Rankin & Company, Mooresville, North Carolina, a carload of oil, 12½ for Sunbeam. The market price was 10 cents.

Q. At Baltimore?—A. At Baltimore. Freight added, 2½ cents per gallon, making 12½.

Mr. CRAWFORD. Is that net 12½, or 10½ the net price?

WITNESS. 10½.

Q. That is, you would deduct the barrel?—A. We would allow for the empty barrel. I am assuming that the empty barrel would net 2 cents per gallon. It would not net more than 2 cents per gallon in any case.

Q. And sometimes slightly less, I assume.—A. Yes; 75 cents to a dollar per barrel.

Q. What did you say the price was at Baltimore at this time?—A. What time do you refer to?

Q. At the time of this last shipment here that you speak about—the shipment to Mooresville.—A. 10 cents.

Q. And the freight was what?—A. 2½ cents.

Q. Making 12½?—A. 12½.

Q. And you allow 2 cents for the barrel, leaving your price 10½ cents to the customer?—A. Yes. Certainly not less than that.

Q. He says also that at Monroe, North Carolina, you made a cut to the Piedmont Buggy Company of 2½ cents—the difference between 15½ cents and 18 cents. Have you got a record of that trans-
13869 action?—A. We sold, on May 22nd, 1907, one drum of gasolene to the Piedmont Buggy Company at 17 cents.

Q. How did you get that price? Was that January 30th?—A. That was May 22, 1907. On January 30, 1907, we sold two drums of gasolene at 15½ cents, bulk price.

Q. Those were the only sales made in that year?—A. They were the only sales.

Mr. CRAWFORD. What were the net prices in those two cases?

Mr. MORRISON. I am coming to that.

Q. What was the Baltimore price and what was the freight?—A. Our price in January, 1907, was 13½ f. o. b. Richmond. That was the price at Richmond, because it is impracticable to ship benzine or gasolene from Baltimore south.

Q. Well, that was your Richmond price?—A. That was our Richmond price.

Q. And what was the freight?—A. It was simply f. o. b. Richmond.

Q. Oh, yes. And the customer had to pay the freight, had he?—A. Yes.

Q. Do you know what the freight was from Richmond to Monroe?—A. I do not.

Mr. CRAWFORD. What do you mean was the net price——

Mr. MORRISON. Well, I am coming to that.

Q. You sold it f. o. b. Richmond at what price?—A. At the established market price—15½ cents.

Q. 15½ cents?—A. Yes; at our regular price.

Mr. CRAWFORD. That is the last transaction you are speaking about now?

WITNESS. That was January 30, 1907.

Mr. MORRISON. Now, let me get through with the witness.

13870 Q. You don't know what the freight was from Richmond to Monroe, do you?—A. I do not.

Q. So you don't know just what the net price would be to the customer?—A. I do not.

Q. But this 15½ cents was your Richmond price for gasolene at that time?—A. It was.

Q. And whatever the freight was the customer would have to pay it?—A. That is right.

Q. Now, your next shipment.

Mr. CRAWFORD. Will you ask him about the one before, about that 17-cent gasolene, because it will save a lot of time if you will get it in now.

Mr. MORRISON. I have been asking him about the January 30th.

Q. I will ask you now about the May 22nd shipment.—A. That was for 17 cents.

Q. And was that your Richmond price?—A. It was.

Q. And in addition to that did the customer have to pay anything?—A. Yes; freight.

Q. He had to pay the freight from Richmond to Monroe?—A. Yes.

Q. And do you know just what that freight was?—A. I do not.

Q. So you don't know what the net price was?—A. No.

Q. Mr. Johnson says that in 1904 the Red "C," at Hickory, North Carolina, took the business of the Martin Furniture Company, the Hickory Furniture Company, and the Piedmont Wagon Works by making a price of 13½ cents, while the Standard's price was 15 cents. I suppose that was on gasolene?—A. Benzine, probably.

13871 Q. What do you say about that?—A. We sold the Hickory Furniture Company February 18, 1904, at 15 cents f. o. b. Hickory.

Mr. CRAWFORD. Net 13 cents?

WITNESS. 15 cents, Mr. Crawford.

Mr. CRAWFORD. Net 13, or net 15?

WITNESS. Net 15. On April 20, 1904, we sold the Martin Furniture Company, of Hickory, one drum of benzine at 15 cents. On June 18, 1904, we sold the Martin Furniture Company one drum of benzine at 14 cents. On June 18, 1904, two drums to the Hickory Furniture Company at the same price—14 cents. On October 14, 1904, four drums of benzine to the Piedmont Wagon Company, at 13 cents. The freight rate to Hickory was about 3 cents per gallon.

Q. Where from?—A. From Baltimore. And the Baltimore market price, from January 1, 1904, to June 1, 1904, was 11 cents.

Q. And that covers all these shipments?—A. Yes.

Q. They all came within those dates?—A. Yes; that is the 14 cents price shipments.

Q. Yes.—A. From June, 1904, to November, 1904, the Baltimore market price was 10 cents.

Q. What would that make the benzine cost to the consumer at Hickory?—A. Well, these prices are delivered at Hickory.

Q. Oh, yes; they were delivered at Hickory. Well, how did they compare with your Baltimore price?—A. They are based on Baltimore with the freight added.

Q. With the freight added?—A. Yes.

Q. And you have given the Baltimore price?—A. Yes.

Q. And you have given the freight rate?—A. Yes.

13872 Q. And you have given the price at Hickory?—A. Yes.

Q. And the Hickory price is exactly the Baltimore price with the freight added.

Mr. CRAWFORD. Don't you make any allowance for the drum in those cases?

WITNESS. We charge the price of the drum.

Mr. CRAWFORD. Is that included in these prices of 15, 14, and 13?

WITNESS. I am not sure as to that. I am not sure whether the Hickory people pay the freight on the returned drum or whether we do it.

Mr. CRAWFORD. Well, is the value of the drum included in these prices?

WITNESS. No. We render a separate invoice for the drum, and when the drum is returned allow the customer credit. We do that as a matter of record.

Mr. CAMPBELL. How far is Hickory from Monroe?

WITNESS. Oh, it is 100 or 200 miles. I can figure it out more carefully if you would like me to.

Q. Mr. Johnson says that the Red "C" made a cut at Newton, North Carolina, in December, 1904, on 5 barrels of oil to J. F. Smyre, of about 1 cent. He is not positive about the exact amount. Have you any record of any shipment to Newton, North Carolina, in 1904, or at any time during that month?—A. We have not.

Q. Did you make any shipment in there during that month?—A. Not to J. F. Smyre.

Q. Well, did you about that time make any to Smyre? In other words, within a few months of December—when the price

13873 would be about the same?—A. No.

Q. Mr. Johnson says that you made a cut in 1907 through the Eureka Manufacturing Company on gasolene. He says that the Standard's price at the time was 18 cents f. o. b. Hickory and yours was 17 cents delivered in Lincolntown. Have you any record of any shipments in 1907 to the Eureka Manufacturing Company?—A. At what point?

Q. At Hickory.—A. No, sir; there is no such concern as the Eureka Manufacturing Company at Hickory that I recall.

Q. Is there at Lincolntown?—A. Yes.

Q. Well, what is the history of that transaction?—A. On March 2, 1907, we sold two drums of gasolene to the Eureka Manufacturing Company at Lincolntown at 16¾, in carloads, shipped from Baltimore. The Baltimore market price for gasolene at the time was 14 cents; freight added, 3 cents per gallon. They hauled the gasolene.

Q. Did he get the advantage of the carload rate there?—A. He did.

Q. It was a carload shipment to what place?—A. To Lincolntown.

Q. But it was not all for one price?—A. No.

Q. And out of that carload shipment to Lincolntown the Eureka Manufacturing Company got a couple of barrels?—A. They received two drums.

Q. A couple of drums; yes. And what price did they pay, as compared with the Baltimore price?—A. They paid 16¾ delivered.

Q. How is that price made up?—A. The Baltimore market price for gasolene at the time was 14 cents; freight rate, 3 cents per
13874 gallon; making 17 cents.

Q. Do you know whether that was higher or lower than the Standard was selling in that particular town at that time?—A. I do not.

Q. Mr. Johnson was asked whether he remembers a case back in 1903 of a price cut by the Red "C" at Lincolntown, North Carolina, and he says: "We had several cuts there, but I cannot tell you just what the prices were." Have you, from that indefinite answer of Mr. Johnson, been able to examine your records and give any answer to that situation?—A. I covered that matter previously, Mr. Morrison.

Q. You have testified concerning that?—A. Yes; January 28, 1903, and April 1, 1903.

Q. Were those the only shipments in there about that time?—A. Yes, sir.

Q. Were any of those cars countermanded?—A. I don't recall.

Q. Did you explain that shipment of January 28, 1903, at Lincolntown—how it was delivered, whether it was hauled over to the stores by the storekeepers?—A. It was hauled by the storekeepers; yes, sir.

Q. Just go on and explain that.—A. The car was consigned to E. & R. Love, at Lincolntown, delivered to the railroad depot, and was hauled from there to the various buyers located either at Lincolntown or within a radius of four or five miles of Lincolntown by the buyers at the cost——

Q. Well, were they allowed anything for it?—A. No—at the cost of hauling of the buyer.

(Recess was here taken until 2 o'clock p. m.)

13875 Q. For the purpose of illustrating your method of making prices and as to whether a certain price is or is not a cut, I will ask you what the Standard's price for 150 test oil in Baltimore is to-day?—A. 7½ cents, tank wagon delivery; 9½ cents in barrels to the wholesale grocers.

Q. What is it in New York?—A. 10 cents tank wagon delivery and 10 cents in barrels for export.

Q. Then if oil were shipped to-day from Baltimore to New York City and sold at the Baltimore price, with freight added, it would be less than the New York price, would it?—A. It would.

Q. Are you familiar with the National Oil Company of Washington?—A. I am.

Q. Do you know whether that company made any cuts or not?

Mr. CRAWFORD. I object to the question as not being rebuttal or being in answer to anything proved by the defendants and as opening up new matter.

Q. Several witnesses on the part of the defendants testified that the National made cuts. Do you know anything about that yourself?—A. My impression is that they did.

Mr. CRAWFORD. I move to strike that out as incompetent.

Mr. MORRISON. That simply corroborates your testimony that they did.

Mr. CRAWFORD. The witness' impression is certainly incompetent.

Q. Do you know what kind of oil they were selling?—A. I know that they sold Texas oil for a period.

13876 Q. Is that a cheaper grade of oil than the other oils that were sold by the other companies there?—A. It is.

Q. Do you know what became of Nicolai?—A. He committed suicide.

Q. What became of his company?

Mr. CRAWFORD. I suppose my objection that this is not rebuttal may be considered to apply to all this line, without repeating it?

Mr. MORRISON. Certainly.

Q. Is the company doing business now?—A. No. It went into the hands of a receiver.

Q. Now, I want to again call your attention to the question of the gauging of barrels. Did you ever overgauge a barrel when you had anything to do with it?—A. I did not.

Q. Or the Red "C" Company or any other?—A. I did not.

Q. Did you ever instruct any of your men to do it?—A. Most assuredly not.

Q. Did you ever know of their doing it?—A. I never have.

Q. Have you given them any instructions upon that subject?—A. Most positive.

Q. And what instructions have you given?—A. To gauge the barrels exactly.

Q. In the course of your business you sometimes receive barrels, I think you said, from other companies?—A. We did.

Q. Did you receive any from the Dixie?—A. We did. We received barrels bearing the brand of the Dixie Oil Works; not from the company.

Q. You received them, I assume, from your customers?—A. Yes.

13877 Q. And you gauged those same barrels afterwards?

Mr. CRAWFORD. I object to this as not rebuttal, not in answer to any testimony in defence, and as opening up new matter.

And I ask that this objection be continued as to all this line. That is understood, is it?

Mr. MORRISON. That is understood.

A. I did.

Q. How did their gauge compare with your gauge of the same barrels?—A. Do you mean the gauge of their barrels as compared with the method of gauging ours?

Q. Yes; and as compared with the capacity as shown by your gauging of the same barrels.—A. Our method of gauging showed that our gauging was lower than theirs.

Cross-examination by Mr. CRAWFORD:

Q. What do you mean by saying that your method of gauging showed that their gauging was higher than yours?—A. Take a barrel bearing the brand of the Dixie Oil Works, it would show the gauge on the head of the barrel to be 53 gallons, while according to our method of gauging it would be 52¼, 52, 51½, 51. In other words, in making a comparison of our method of gauging barrels and the method employed by other companies, as indicated by the gauge on the heads of the barrels that were returned to us, we found that our method of gauging showed a lower gauge than did theirs.

Q. When did you regauge these Dixie barrels, or these barrels marked with the Dixie's name?—A. At different times.

Q. Well, when?—A. I gauged some in the fall of 1905.

Q. Did you regauge them personally?—A. I did, and had
13878 our salesman, Mr. W. J. Metzel, at our works.

Q. How many did you regauge then?—A. Half a dozen, more or less.

Q. Did you make any record of the gauging at the time?—A. I did not.

Q. You are relying on your memory, then, in regard to it, are you?—A. I am.

Q. What other time did you regauge any?—A. I did it several times previous to that.

Q. Tell me when.—A. I couldn't tell you that positively.

Q. Tell me as close as you can. You have made a serious charge here. Now, I want to know the dates.—A. I wouldn't care to give the date, sir, other than as to that one incident. I should say that, according to the best of my recollection, it would be in the years 1902 and 1903.

Q. How many barrels did you gauge in those two years which bore the Dixie mark?—A. I couldn't tell you, sir.

Q. You can't tell how many you regauged?—A. I could not, sir.

Q. Can't tell whether it was two or three or more?—A. I could not, sir.

Q. Did you keep any record of the gauging at the time?—A. I did not.

Q. Can you now tell me what the mark was on any one of those barrels or what you found it to contain?—A. I could not.

Q. Can you tell me what the mark was on any one of these half dozen barrels regauged by you in 1905 or what you found it to contain?—A. I could not, sir.

Q. And you can't tell what the difference was between the
13879 mark and your regauging as to any barrel, can you, on your oath?

Mr. MORRISON. Sure, on his oath.

WITNESS. In the case of one barrel, not less than three nor more than five gallons.

Q. In what case was that?—A. In the case of one of the half dozen.

Q. One of the half dozen in 1905?—A. Yes.

Q. That is as near as you can come, is it?—A. Yes.

Q. What did you do with that barrel? Did you use it?—A. Yes.

Q. You used all these barrels, did you?—A. We did.

Q. And that is the only one in regard to which you can now tell what the difference was? Now, mind, I don't want any surmises; I want to know as to the particular barrels——

Mr. MORRISON. Oh, let the witness answer. He doesn't need any lecture from you about it.

Mr. CRAWFORD. Wait a minute, Mr. Morrison.

Q. I want to know as to any particular barrel other than this one that you have named, what the difference was between the stencil and what you found it to be.

Mr. MORRISON. He has already answered that question twice at least.

Q. If you say this is the only one that you remember, that is all I want to know.—A. I recall having gauged six barrels, more or less, bearing the brands of the Dixie Oil Works, on one occasion, when I had our salesman, Mr. Metzel, there, and showed him the gauge of the Dixie Oil Company's barrels and the gauge of our
13880 barrels and explained how the Dixie were able to make a very much lower price.

Mr. CRAWFORD. I object to that, because you are now going into something that is not within your personal knowledge. I don't want to know what you told Mr. Metzel.

Q. You are not able to give any other instance than this one barrel—of what the amount of divergence was as you found it?—A. I wouldn't care to say.

Q. Where did you get this half-dozen barrels that you got in 1905?—A. They may have been returned to us by the Dixie's customers, or by our own customers, or may have been delivered to us by barrel dealers.

Q. You don't know where they came from?—A. I could not say.

Q. You don't know whether they came to you directly from the Dixie, whether they passed through the Dixie's hands or whether they passed through other hands in the meantime?—A. No.

Q. And you don't know who placed upon the barrel the stencil to which you refer, which was there?—A. Will you repeat that question?

Q. You do not know who placed upon the barrels the stencils which you say you saw there?—A. I do not.

Q. You spoke of your method of gauging these barrels. Just tell me what you mean by your method?—A. The commercial method of gauging a barrel.

Q. Describe it.—A. By the insertion of the gauge rod through the bung-hole to the chine of the barrel on the one side, then reversing it to the chine of the barrel on the other side, taking the sum total of the two gauges and dividing it by two, giving the gauge of the barrel.

13881 Q. Yesterday you spoke about some device that you used in filling the barrels, in which there was a float. That device has no bearing at all upon the contents of the barrel, has it? It does not fix the contents of the barrel?—A. No.

Q. It does not enable you to determine whether a barrel, for example, shall be 52 gallons or 50; it simply prevents the barrel from running over, doesn't it, when you are filling it?—A. It doesn't prevent that, but it practically insures——

Q. That is to say, it gives you a warning when the barrel is full? A. It shuts off automatically when the barrel is filled to its proper capacity.

Q. That has nothing to do with determining whether your barrel was correctly gauged or not?—A. Has no bearing whatever.

Q. Mr. Fehsenfeld, your company sells, I believe, other brands of oil besides the Red "C" and the White "C," does it not?—A. It does.

Q. Would you mind naming them?—A. Principally Sunbeam oil, Columbia Head Light oil, Garnet Red oil.

Q. Is that all?—A. Aurora.

Q. Any more? How about one called Excelsior? Do you handle that?—A. We handle Excelsior oil.

Q. And Pioneer?—A. Yes.

Q. Any more?—A. Astral.

Q. Any more?—A. That is all.

Mr. MORRISON. How about the Red "C" and White "C"?

Mr. CRAWFORD. I mentioned those.

WITNESS. I mentioned those.

13882 Q. Now, that includes how many kinds of red oil. Two? The Red "C" and Garnet Red?—A. Yes.

Q. Are they of different grades?—A. The Red "C" and Garnet Red?

Q. Yes.—A. They are.

Q. What is the difference in price between them?—A. The Red "C" oil is the White "C" oil colored; the Garnet Red is the Columbia Head Light colored. The difference in price is one-half cent per gallon between the corresponding grade of red and white. The price of Columbia Head Light oil is 10½; Garnet Red, 11. The price of White "C" oil is 13; Red "C" oil, 13½.

Q. The difference between White "C" oil and Columbia Head Light oil is how much?—A. 2½ cents per gallon.

Q. Has it sometimes been more than that in the last ten years?—A. Not to my recollection.

Q. These various grades you have sold through substantially ten years or more, haven't you; ten or fifteen years—close to it?—A. Not substantially. We have sold the Sunbeam, Columbia Head Light, Garnet Red, Red "C," and White "C," substantially.

Q. For ten or fifteen years?—A. Yes.

Q. And the Aurora and Astral are newer brands, are they?—A. No; they are brands that we sell comparatively little of.

Q. You have had them, however?—A. Yes.

Q. And the same with the Excelsior?—A. Yes. Excelsior we sell comparatively little of.

Q. What is the relative price of the Sunbeam compared with the Columbia Head Light?—A. 9¾. ¾ of a cent per gallon differential.

13883 Q. That is to say, taking the White "C" as a standard, Columbia Head Light is 2½ cents below that?—A. Yes.

Q. And the Sunbeam a cent and three quarters? Did you say that?—A. No; ¾.

Q. ¾ cents below the Columbia Head Light. What relation has the price of the Pioneer to those two or either of them?—A. The Pioneer is practically a dead brand.

Q. Where did the Aurora and Astral come in?—A. In 1904 we took over the business of the Southern Oil & Supply Company, and the brand "Aurora" oil was a popular brand with them, and we supplied the corresponding grade. The Aurora and the Columbia Head Light are the same oil.

Q. They are the same oil?—A. The same oil.

Q. But you found that there was a certain good-will attached to the name "Aurora," I suppose?—A. Yes.

Q. And in order to retain the trade and the benefit of that good-will, you kept the old name?—A. Yes.

Q. But it is, in fact, the same oil as the Columbia Head Light?—A. It is.

Q. Sold at the same price, freight and other things considered?—A. Yes.

Q. You have found in practice that the retaining of an old name like that has some important bearing upon the trade, have you not?—A. It has.

Q. I don't know whether I asked you how the price of your Excelsior compared, say, with Columbia Head Light. I will ask you that now. I think you said it is a dead brand?—A. Practically a dead brand.

13884 Q. When it was a live brand, how did it compare when you you were using it?—A. A differential of a cent a gallon.

Q. More, or less?—A. More.

Q. That is, the Excelsior was a cent more than the Columbia Headlight?—A. Yes.

Q. And about a cent and a half less than the White "C"?—A. Yes.

Q. Now, these differences that you have stated, are they the same differences that have been maintained throughout the last ten or fifteen years, or have they varied? Have they been the same for the last ten years?—A. Substantially.

Q. Now, you have stated here that you make your prices, as a rule, Baltimore plus the freight to different points, and you said something to the effect that that was varied by local conditions, local trading conditions, or something of that sort. I suppose you mean by that that you sometimes sell at less than the Baltimore price plus freight, where you have competition? Is that your meaning?—A. Yes; and perhaps sometimes more.

Q. Yes; but you do sometimes sell for less, owing to competition?—A. Yes.

Q. It is not an unusual thing for a merchant to sell for less, where he has competition, than elsewhere, where he has none, is it, in your experience?—A. My experience has been that competition has made a very wide difference in the price, as witnessed the fact that tank-wagon oil in Baltimore sells at 7½ and in New York at 10.

Q. It is a fact, is it not, in commerce generally, that where
13885 competition exists merchants sell at closer prices than where it does not exist?

Mr. Morrison. That is objected to. It is not shown that this witness has ever been in any other business than the oil business, certainly not for fifteen years.

Q. Have you ever been in any other business than the oil business?—A. I have.

Q. Just for Mr. Morrison's benefit, state in what business.—A. I am in the cigar business now. The fact of the matter is, though, that competition bears no relation to the price at which we sell our cigars.

Q. Have you ever been in any other business than the cigar business and the oil business?—A. Yes; groceries and sundries business.

Q. For Mr. Morrison's benefit, not mine.

Mr. Morrison. You need not ask anything for my benefit.

Q. Groceries and sundries business?—A. Groceries and sundries business.

Q. Is that all?—A. Yes,

Q. Well, that is a pretty good selection. I think you are qualified to answer the question, whether in your observation it is not a general practice in all lines of business, at any rate in those three lines of business, to sell at closer prices when there is competition than when there is not?

Mr. Morrison. When were you in the grocery business?

Witness. In the sundry business?

Mr. Morrison. The question is when you were in that business?

Witness. Within the last eight years, and in the cigar
13886 business within the last fifteen. I should say that in the sundry business and in the cigar business I found that competition has made no difference in the matter of prices, and that that is true also in the business of the manufacture of paints, with which I am quite intimate.

Q. Isn't that because the dealers deal largely in specialties which can not compete squarely with the business of other merchants? Don't you in the paint business handle things by special marks which are not duplicated accurately by other merchants?—A. I don't know.

Q. At any rate, in the oil business you have found it to be a fact that prices of oil are affected by competition, have you not?—A. I have.

Q. And have you had occasion to observe this, in regard to other oil merchants than yourself and the Standard Oil Company? Leaving those two out of consideration, have you had occasion to notice it in regard to other persons, that their prices are affected by competition?—A. Do you mean other oil merchants?

Q. Yes.—A. Not to any extent.

Q. Do you mean that you have not noticed it to any extent?—A. I have not found it to apply to any extent, I mean to any extent as applies to the difference in prices in the oil business as I know it through my own personal experience in the business.

Q. At any rate you make some differences in your own case, due to competition? That is to say, you sell, in some instances, at less than the Baltimore price plus freight, on account of local conditions of competition?—A. We do.

The EXAMINER. There is a question I would like to ask. It
13887 has occurred to my mind several times. Just for information, I would like to ask whether the different dealers in oil sell an oil which is substantially the same grade. For instance, do you have an oil that corresponds with the oil sold by your competitors, as to burning qualities?

WITNESS. Yes.

The EXAMINER. They are substantially the same?

WITNESS. Substantially the same, in Baltimore City, from tank wagon delivery.

The EXAMINER. And is that generally understood in the trade, that this oil has the same practical value as another oil produced by some other refiner?

WITNESS. It applies more particularly in tank wagon deliveries where conditions are competitive in the same degree.

The EXAMINER. As a general proposition, where an article is sold, what we call a staple, whose quality and value is known throughout the trade generally, the dealer (I was going to say) can't fool the buyer. It is different in dealing in a specialty that your competitor does not make. Doesn't that make a difference in prices, or a competition in prices?

WITNESS. Well, in the matter of tank wagon deliveries, where the prices are the same, and there is somewhat of interchange of trade, quality is represented to be uniformly the same.

The EXAMINER. So that the buyer knows, when he buys this oil or that oil, that he is getting substantially the same thing?

WITNESS. Yes.

13888 Q. You testified to a certain time when your company extended its Baltimore tank wagon service to the suburbs. I don't recall whether you said when that was.—A. I did not mention when it was.

Q. When was it?—A. I should say about 1898.

Q. As I understand, prior to your going out to the suburbs of Baltimore the prices of the Standard in those suburbs were higher than the Baltimore prices?—A. Higher than in the city; that is right.

Q. Do you remember how much higher?—A. Well, I will say 3 cents a gallon.

Q. Now, you went out, I think you said, to equalize the prices. I suppose you mean by that that you went out and offered your oil at Baltimore prices to the people in the suburbs?—A. I did not.

Q. No?—A. No.

Q. What did you do?—A. I endeavored to secure that trade at the higher price, to equalize with the very low price that was prevailing in Baltimore; a price that would give us a margin of profit. In other words, I wanted to average up a profit.

Q. You went out there and tried to get a price several cents better than you were then getting in Baltimore?—A. Yes.

Q. So that what you may have lost on one you made up on the other?—A. Yes.

Q. Now, what did you do?—A. We started first on the Frederick road——

Q. At what relative price?—A. I first made an investigation as to the country about Baltimore, the Baltimore price and the
13889 suburban price, and then I supplied my tank-wagon drivers with that information and told them that up to a certain limit the price of oil was to be so and so and beyond that it was to be so much higher. They sold at the higher price, and the next time they came around the Standard Oil Company had made, up to the limit that we had reached, the city price to apply; and we followed.

Q. If the Standard Oil Company had not done just what you have just said, then you would have obtained from this suburban section a price several cents higher than you were getting in Baltimore?—A. I would, because the Baltimore price represented a loss.

Q. Why did you keep up business in Baltimore, if you were selling at a loss? Was it simply because you didn't want to abandon the market?—A. It is a necessary condition in the business. If we would pull up from a market whenever that market became unprofitable, we would be pulling up all the time and the trade would lose confidence in us.

Q. And the mere fact that you temporarily or for a short time, in order to meet competition, had to sell very low or sell at a loss; you don't on that account abandon the market?—A. No.

Q. No. You never could maintain any stability of trade at all, if you did that, could you?—A. Not in a large city like Baltimore. But

we do apply that principle outside of Baltimore, as we did at Yorkville.

Q. Well, that was a small matter, I suppose.—A. Our business in combination is a small matter.

Q. But you would not in Baltimore or any other large city
13890 abandon it because for the time being you were sustaining a loss?—A. It would not be commercially practicable.

Q. And even if you were obliged to run along for some time at a loss, you still would not abandon that market if you could hold on?—A. We would hold on if we could.

Q. Even if the low range of prices lasted for a considerable time?—A. I will simply make the same answer—we would hold on as long as we could.

Q. You would hold on there, and if you could get a better price and a more remunerative price somewhere else, you would get it, wouldn't you?—A. Sure.

Q. And if you could get a pretty good price, a pretty good profit, or more than an average profit somewhere else, you would get that, wouldn't you?—A. I should say no.

Q. At any rate, you would gladly sell elsewhere where you could sell at a profit?—A. Sure.

Q. And what you have just told me about Baltimore shows that the difference between selling at an unprofitable price and the price at which you would have gladly sold if you could, outside of Baltimore, was a matter of several cents difference; you said that, I think?—A. Because the Baltimore price represented a loss.

Q. Precisely. Now, in such a case as that, where you were selling in a place at a loss, and holding on, as you said, you calculate to come out whole by means of the profit you get in other places; that is so, isn't it? I mean to say you set the loss in one place off against the profit in another and calculate to make a profit on the whole
13891 proposition?—A. We hold on as long as we can.

Q. Well, isn't that so—that you calculate to make a profit on the whole proposition?—A. We are running our business to realize a profit.

Q. That is not my question.—A. I can answer your question in another way——

Q. No; I want you to answer it in my way or else say that you can't answer it. Now, I ask you, when you are selling in one place at a loss and in other places at a profit, whether you don't offset the the loss against the profit and calculate to make a profit on the whole business?—A. We do not. Each situation takes care of itself.

The Examiner. But you would like to make a profit on the whole situation?

Witness. Sure.

Q. You would like to make a profit on the whole situation?—A. Yes; sure.

Q. And you don't consider it necessary, if you are selling at one place where it is 10 cents and making a profit of 2, and at some other

place selling at a loss of a cent, owing to conditions such as you have described—you would not think that you were bound to cut the price in the first place down to the price which prevailed in the place where you were making a loss, would you? Is my question clear? Let me ask it in another way. Merely because you sold in a single place at a loss for a longer or shorter time, you would not think that you were bound to reduce the price in every place where you sold, to the same point, so that you would be making a loss everywhere?—A. If I did that I would be out of business.

13892 Q. Sure you would. In other words, as you yourself just very well said, each place takes care of itself?—A. It does, to the extent that at points where we are able to do business at a profit we remain; where we do business at a loss, as at Yorkville, South Carolina, we pull out; we decline the business; as at Burlington, North Carolina; Durham, North Carolina; Greensboro, North Carolina; Lenoir, North Carolina; Marion, North Carolina, and other points where, through the operation of these bogus companies, prices became ruinously low, and we pulled out and went into other markets.

Q. But in large markets, there you do not pull out, but hold on?—A. We can afford to do it, for the reason that our investment would become junk; our horses, tank wagons, and entire equipment would be worthless.

Q. And all the money you had spent in building up a trade there. And, therefore, you do hold on there, even if you have to sell at a loss for a while?—A. We do.

Q. In various instances you were asked about the testimony of witnesses who have testified for the defendants to the effect that the Red "C" Oil Company in different places had made cuts. Now, you have made your explanation as to those various instances. You do not, however, know, I suppose, yourself, what were the prices of the Standard Oil Company in those instances; you are only testifying as to the prices of the Red "C" and how they came to be fixed?—A. That is all.

Q. You don't know what the prices at the same time of the Standard were?—A. No. We can't afford to maintain a secret-service system, nor have we any desire to do it.

Q. Well, that is smart, but not pertinent, Mr. Fehsenfeld.

13893 That would apply to the case of the Motor Car Company at Baltimore, to the case of Raspe, at Raspburg, near Baltimore, and Pumpier, at Baltimore, and various other persons named in Baltimore, where you said you didn't make a cut. You don't know what the Standard's price was on those occasions. You simply mean to say that you sold at your regular price, is that right?—A. In the case of the Motor Car Company, our price was the same as the open or prevailing market price at the time. That I know. In the case of Raspburg, I explained that as being possibly just a matter of a quarter of a mile beyond the northern point reached by our tank wagons. In the case of Pumpier, I gave no testimony and know nothing of it.

Q. I understood you to say, in regard to Corbett, of Pikesville, Maryland, that the Standard Oil Company had loaned him a drum and a tank?—A. Tank wagon.

Q. A drum and a tank wagon?—A. Tank wagon.

Q. How do you know that?—A. From the reports of our city salesmen; from the reports of our tank wagon driver; also from Foley & Son, who were neighbors and competitors of Robert Corbett, who requested that we loan them tank wagons.

Q. Then you know it because these various people told you?—A. Yes.

Q. That is all?—A. That is all.

Q. You said something to the effect, if I understood you, that Mr. Corbett took affront at the Standard Oil Company because the Standard Oil Company sold his customers; did I get you right?—A. Yes, sir.

Q. You know that, I suppose, from what was told you, don't you?—A. By our tank wagon driver, who reported to me
13894 that Corbett had told him.

Q. That is the only way you know that?—A. That is it.

Q. Now, you made some statement to the effect that the practice of loaning storage tanks had been followed by the Standard Oil Company for a number of years. I suppose you know that in the same way, do you?—A. I know that because it was so common.

Q. Well, you know it because you were told it by various people?—A. Oh, no; I saw the tanks, and went around among the trade, and it was a common practice. It was common among all the oil dealers of Baltimore.

Q. You testified, if I got you right, in regard to a transaction at Charlotte, North Carolina, where you made some allowance for hauling the barrels?—A. No; we made no allowance.

Q. Well, there was something said about 25 cents a barrel. I didn't quite get that. What was it?—A. I said, in answer to an assertion that we had cut the price half a cent; that that half cent was probably due to the hauling of the full barrel of oil from the station to the merchant's store, the expense of pumping from the barrel into the storage tank, and the return of the empty barrel from the merchant's store to the depot for shipment to us at Baltimore; that service actually costing the merchant about 25 cents, so that if we sold the oil at 10½ when the tank-wagon price was 11, the merchant was actually paying us the equivalent of 11 cents.

Q. Then the half cent represented the service and this hauling?—A. Yes.

Q. Now, you were asked about the Camden Grocery Company and a sale to that concern about January, 1906, I think; as I
13895 have it, sold in December, 1905, and arrived in January, 1906; and as I have you down here, you said you sold 60 barrels at 13½ gross or about 11½ cents net. I have your testimony upon that correctly, have I?—A. I would have to refer to my memorandum in order to see. My impression is that that is it.

Q. Won't you refer to your memorandum?—A. Yes. (Referring to memorandum.) Yes, sir.

Q. Now, you don't know, as I understand you, at what price the Standard Oil Company was selling at that time, in that place?—A. I do not.

Q. It was testified by Mr. Barksdale that the Standard's price at Camden at that time was 12½ cents. If that was correct, then you sold for a cent under the Standard's price? I don't mean to say that you knowingly sold, but you did in fact sell for a cent under the Standard's price, if Mr. Barksdale's testimony about that is correct.—A. The difference between 11½ and 12½ is 1 cent per gallon, of course.

Q. And you did, therefore, on the assumption that he testified correctly, sell for a cent less than the Standard's then price? I don't say that you knowingly did it, but you did it as a matter of fact, did you not?—A. You see, the Standard's price of 12½ cents per gallon was from tank-wagon delivery; lots of 20 gallons or upward. When the Camden Wholesale Grocery Company bought this carload from us they had to store the 60 barrels of oil—had to keep it on hand until it was disposed of; had to——

Q. I have not asked you that. You can give that explanation to Mr. Morrison, if he wants it. I want you simply to say whether it is not the fact, assuming that the Standard's price
13896 was as testified by Mr. Barksdale, 12½, and your price was 11½ cents—whether you then did not in fact sell for a cent less than the Standard's price?—A. That is obviously true.

Q. You said something about their price being for 20 gallons and upwards. You don't know that of your own knowledge, do you?—A. The minimum tank wagon delivery is 20 gallons.

Q. Not everywhere, is it?—A. Sometimes it is less, but through the country——

Q. It has been testified by numerous witnesses in this case that the 20 gallon rule was abandoned in various places years ago?—A. That really has nothing to do with the case, because the tank wagon delivery may be 5 gallons and upwards. I know of cases where it has been 5 gallons and upwards.

Q. Now, you testified that at Marion, South Carolina, in March, 1906, you sold a car of Sunbeam at a net price of 11¾; that is as I have it. I don't want to catch you; verify it, please, as we go along. I took it down that way, but I have not the minutes before me of the testimony that was taken this morning.—A. (After referring to a memorandum.) 11¾ cents; yes, sir.

Q. Mr. Barksdale testified that at that time and place the price of the Standard Oil Company was 12½ cents a gallon. If that testimony was correct, then in that instance you sold for ¾ of a cent under the Standard?

Mr. MORRISON. That is a mere matter of arithmetic.

Q. In the case of the Forrester Company, at Northwilkesboro, North Carolina, you testified that in November, 1907, you sold that company oil at 13½ and 14½, if I recollect?—A. Yes.

13897 Q. What did you mean by that?—A. That was two grades of oil.

Q. Which was which?—A. Sunbeam and Columbia Headlight.

Q. Sunbeam was 13½?—A. Sunbeam was 13½ and Columbia Headlight was 14½.

Q. And which do you consider the equal of the Aladdin brand?—A. The Columbia Headlight. Let me correct my statement. The shipment to F. D. Forrester Company, North Wilkesboro, North Carolina, November 23, 1907, was 50 barrels of Columbia Headlight at 13½ and 10 barrels of Garnet red at 14 cents—a differential of half a cent a gallon between the white and the corresponding grade of red oil.

Q. 13½ for Columbia Headlight?—A. And 14 for Garnet red, which is Columbia Headlight oil colored.

Q. As to this man J. F. Smyre, at Newton, North Carolina, you have sold to him, have you not, at various times?—A. We have. He was formerly our agent at Newton, North Carolina, and was taken away from us by the Dixie. I don't think we have sold him since.

Q. Where is Mooresville, North Carolina?—A. It is on a branch line running from Charlotte to Statesville, North Carolina.

Q. What price does Mooresville take—the Richmond price?—A. No. That was based on Baltimore, freight added.

Q. What about Monroe? What price does that take?—A. That was less than car-load benzine. Richmond price on benzine or gasolene in bulk.

Q. What is the price of refined oil in Monroe?—A. I have no idea.

Q. I mean your price. You haven't made any shipments

13898 there?—A. No, not in years.

Q. What is the reason why you base the price at Mooresville on Baltimore and the price at Monroe on Richmond?—A. Mooresville was a carload shipment, and in carloads we can ship from Baltimore through at sixth-class rate, the same as we can ship from Richmond through. In the case of Monroe, North Carolina, however, the through rate would be third class plus a differential of 9 cents per hundred on account of the all-rail above the rail and water rate and the long time it would take to make a shipment by all rail from Baltimore to Monroe.

Q. In other words, the difference is——A. It is a matter of freight conditions.

Q. It is a matter of freight conditions?—A. That is it.

Q. You spoke, upon your direct examination, about certain lots of oil that you had shipped, in which you said the average gauge was a certain amount; for example, 51¼ gallons. I would like to have you tell me, if you can, what the extreme low and the extreme high was.—A. From 47 to 57.

Mr. Morrison. You mean those are the extremes that are recognized in the trade?

Witness. Yes.

Mr. MORRISON. But those are not the extremes that were given in your testimony as to the barrels that you gauged?

WITNESS. Not of the average gauge.

Q. Now, for example, you said that in sending a shipment to Yorkville, February 14, 1906, of 60 barrels, the average gauge was 51¾ gallons. Do you know what the extreme high and extreme low
13899 in that instance were?—A. I can tell you. [After referring to paper.] Low, 48; high, 54.

Q. As I understand you, you said that you discarded barrels that were below 47?—A. Yes; for the use of refined oil.

Q. Take the shipment of June 14, 1906, to the same place. You said the average was 51¾. Can you give me the extremes in that instance?—A. 50 and 55.

Q. Take the shipment of September 26, 1906, to the same place. The average, you said, was 51¼?—A. Yes. 47 low, 56 high.

Q. Did you say that you discarded those which were only 47, or if they held below 47?—A. Less than 47.

Q. If they held just 47, you would use them for refined oil, wouldn't you?—A. Yes. The term used is, "Barrels gauging less than 47 gallons are classed as tar barrels." That is the term that we use.

Q. That is a custom of the trade, isn't it?—A. Yes.

Q. It is not peculiar to your company?—A. No.

Q. On November 23, 1906, you shipped another carload, average gauge 50¼. Can you give me those?—A. 47 for low, 57 high.

Q. March 9, 1907, you shipped 66 barrels to Carroll Brothers (that is the same place, I suppose). The average of 23 barrels was 50 gallons, and of 43 barrels was 51. Take them separately.—A. 47 for low.

Mr. MORRISON. Both lots?

WITNESS. Yes, sir; March 9, 1907.

Q. That is the 23 barrel lot?—A. I am giving you the total. It was all in one shipment. 54½ for high.

Q. 47 to 54½. That applies to the whole 66 barrels, does it?—A. Yes.

Q. Treating them as one lot?—A. Yes. My examination of the papers showing gauges indicates that there was only one barrel of the extreme high—one or two—and one or two of the extreme low. They generally run 50, 51, 51½.

13900 Q. Did you know a concern called the Southern Oil Supply Company in Baltimore?—A. I did.

Q. Are they still in business there?—A. They are not.

Q. Do you know when they went out of business?—A. We took over their business in June, 1904.

Q. Had the Red "C" Oil Company prior to that time obtained part of its oil from the Southern Oil Supply Company?—A. No, sir.

Q. Do you mean to say that it had not purchased any of its oil from the Southern Oil Supply Company? Is that what you mean to say?—A. Substantially not; possibly interchange of accommodation.

Q. How about gasoline? Had it purchased any gasoline from them?—A. To the same extent, that is true.

Q. I am not sure that I asked you about that second grade of red oil. How much difference was there between the price of that and the Red "C?" Did you tell me it was 2½ cents?—A. Yes.

Q. That is the case to-day, is it?—A. Yes, sir. The corresponding grades of white, you know, differ the same.

Redirect examination by Mr. MORRISON.

Q. In answer to Mr. Crawford you stated that your Baltimore price was the base price with the freight added, but that competitive conditions sometimes modified that. I wish you would explain what you mean by that answer, and in what class of cases competitive conditions modify that rule.

13901 Mr. CRAWFORD. I object to that because the witness has already testified very fully upon this, and this is an attempt to get him to change his testimony.

Mr. MORRISON. Oh, no; I hope he will not change it, and I don't think he will.

A. At Goldsboro, North Carolina, we had been selling oil for years, owned a frame warehouse there, and consigned oil to D. J. Rivervart, our agent. He receives the oil, delivers it to the storekeepers, and meets the tank wagon price for oil. The price at Goldsboro at the present time is 10½ cents; at Wilson, North Carolina, just a short distance above Goldsboro, on the same railroad, a difference of 30 or 40 miles in distance, the price is 11½.

Q. The Standard's price?—A. The Standard's price. We are not located at Wilson. We endeavored to raise our price at Goldsboro because 10½ cents does not afford us a legitimate margin of profit, and we did raise the price to 11 cents a gallon, and maintained that for several weeks or longer, and we were losing business and dropped the price to 10½ to meet the Standard Oil Company. Now that is an illustration of local conditions.

Mr. CRAWFORD. But you continued in Goldsboro?

WITNESS. We are at Goldsboro now; yes, sir.

Q. Now, in how many instances is that true throughout your southern territory, where you are maintaining a price to meet the Standard's that is below the Baltimore price with the freight added?—A. I could not answer that, Mr. Morrison; it would be purely conjecture to do so.

13902 Q. Well, can you say relatively what amount of your business is conducted at those lower prices?—A. I would not care to make an answer to that.

Q. The question is whether it is practically all of your business or whether it is but a small percentage, or give us some estimate about it.—A. Oh, it is a small percentage.

Q. Now, where you go into a town for the first time and make a sale, at what price do you make it there?—A. At not less than the prevailing tank-wagon market price, when we make a sale for the

purpose of establishing a permanent agency. If, however, we make up a car load of oil by combining the orders of the various merchants, to the aggregate of 60 barrels, we are obliged to make some reduction in price in some instances as an offset to the matter of hauling and return of empty barrels.

Q. Yes; I know; but is that your Baltimore price with the freight and those necessary expenses added—where you make up a car load to sell in a town?—A. It is.

Q. In all places where you sell I assume you have competition from the Standard; is that right?—A. It is.

Q. And where you go into a town for the first time and make up a carload or sell some oil to a dealer in that town, where you do not anticipate starting a station or making any investment, what is your price in that particular town?—A. The Baltimore price, freight added.

Q. And that may be lower than the Standard at that particular time, as I understand you?—A. Yes.

13903 Q. Then, suppose in that particular town, after you had gone in there, the Standard reduces its price, do you remain in that town selling, or what do you do?—A. That depends upon conditions. At Goldsboro, North Carolina, we have a warehouse——

Q. No; but I mean where you have not any warehouse.—A. Where we have no warehouse we oftentimes pull up, as we did at Yorkville, South Carolina. When the price becomes unprofitable, then we can withdraw.

Recross-examination by Mr. CRAWFORD:

Q. You have other competitors than the Standard, haven't you, in some places where you sell?—A. We have.

Q. In Richmond, for example, you have other competitors, haven't you?—A. Yes.

Q. And at various other places where you sell?—A. Yes.

Q. And I suppose you feel the effects of the competition of those competitors, as well as you do the competition of the Standard?—A. Yes; not to the same extent, of course.

Q. Have there been no instances where you have sold a single car load or have made a special sale without permanently establishing yourself, where your price has been less than the Baltimore price plus freight?—A. No instance has been brought to my attention nor can I recall any.

13904 WASHINGTON HICKS, called as a witness on behalf of the petitioner, in rebuttal, testified as follows:

Direct examination by Mr. MORRISON:

Q. What is your name?—A. Washington Hicks.

Q. Where do you live?—A. Rockville, Maryland.

Q. What is your business?—A. General merchant; merchandising.

Q. How long have you been in business in Rockville?—A. The business was established there under the firm name of B. F. & W.

Hicks in 1892, I think, and after the dissolution of the partnership it was run in my name, and I took it over on January 1, 1900?

Q. Do you know Mr. Wilmer, who represented the Dixie Oil Works at one time?—A. Yes, sir.

Q. Did he ever call upon you?—A. Yes, sir.

Q. Mr. Wilmer testified that he gauged some barrels there that had been sent you by the Red "C" Oil Company. Do you remember that occasion?—A. Yes, sir; I have some memory of it.

Q. Did he make a measurement there of the barrels?—A. Yes, sir.

Q. Do you know how many?—A. Why, I could not say just how many; it was two or three.

Q. What method did he use in gauging those barrels?—A. He had a gauge rod.

Q. One that he brought with him?—A. One that he brought with him.

Q. And did you assist, yourself, in the gauging or partici-
13905 pate in it?—A. I was standing present when some of the barrels were gauged.

Q. You were standing by, you say?—A. Yes, sir.

Q. Now, according to his gauging of those barrels, did it appear that they were over-gauged or under-gauged?—A. Yes; my memory is that there were several over-gauged.

Mr. CRAWFORD. Overgauged, you say?

WITNESS. Yes, sir.

Mr. CAMPBELL. When was this, Mr. Hicks—what year?

WITNESS. I did not take any record of the date, but all I can trace the memory to was in 1905.

Q. Did he satisfy you at that time that these barrels were over-gauged?—A. Well, I don't know whether they were or not. All I know is by the method he used, you know—the gauge rod.

Q. Was that the only occasion that he gauged your barrels?—A. I don't think he gauged them but one time.

Q. But the one time?—A. Yes, sir.

Q. That is all you remember about now?—A. That is all I can recall, sir.

Q. As I understand you, then, he left you in some uncertainty after that——A. Yes, sir.

Q. ——as to whether you were getting full measure?—A. Yes, sir.

Q. After he left did you do anything to satisfy yourself whether or not you were getting full measure?—A. Yes; I had a barrel measured.

Q. One of the same lot?—A. Yes, sir.

Mr. CRAWFORD. One of the very same ones that he was gauging?

13906 WITNESS. No; not the same barrel.

Q. I am asking you if it was one of the same lot. When you say that you had the barrel measured, you mean by that that you drew the oil from it and measured it, don't you?—A. Yes, sir.

Q. How did that measure out?—A. It overran.

Q. Overran?—A. The gauge, yes, sir.

Q. Did that satisfy you then that you were getting your full measure from the Red "C"?—A. Yes; it satisfied me that I was getting what I paid for.

Q. Now, did he offer to make any contract with you for a lower rate at that time than the regular prevailing price?—A. Yes; on one occasion. I can not recall whether it was the same day, the same visit there or not, that he gauged those barrels.

Q. You have been buying from the Red "C" principally for many years, haven't you?—A. Yes.

Q. You have bought some from the Dixie, have you?—A. Yes.

Q. What proposition did he make to you about price on oil that he represented to be as good as the Red "C" oil?—A. I think, to the best of my memory, he offered, if I would sign a year's contract, to deliver me oil at about 8 cents a gallon.

Q. How did that price compare with the Red "C's" price at that time?—A. The Red "C's" price in March, 1905, was 11¼ cents, delivered at the depot, f. o. b.

13907 Q. As you remember, about how much of a cut was it that he offered to make from the Red "C's" price at that time if you would make a year's contract?—A. If 8 cents was the price, as I remember it, it would be a difference of 3¼ cents. I can't say that the Red "C's" price averaged all the year 11¼, but in March, 1905, their price was 11¼ cents.

Q. Yes. You knew, didn't you, at the time when he made the proposition whether it was lower than the Red "C's" price at that time?—A. Yes; it was lower.

Q. It was lower?—A. Yes.

Q. Did you buy any oil of him?—A. Yes; I bought some oil, at different occasions—a few barrels.

Q. How many different purchases did you make of Wilmer?—A. I think, from my records, that Mr. Wilmer never came there to solicit patronage until 1905, and my records show in 1905 that I made a purchase of him on two different occasions.

Q. He was representing the Dixie?—A. Yes.

Q. At what price as compared with the Red "C's" price?—A. (Referring to memorandum.) March 20, 1905, they sold oil—their invoice shows oil purchased at 8¼ cents a gallon, and $1.25 each for the barrel.

Q. The Red "C"?—A. No; the Dixie. That is practically an average of 10½ cents.

Q. How did that compare with the Red "C's" price at that time?—A. The Red "C's" bill the same month shows that I paid 11¼ cents.

Q. That was a difference, then, of how much in the price?—A. Three-quarters.

13908 Q. Three-quarters of a cent a gallon?—A. Yes, sir.

Q. Did you make another purchase of him?—A. Not after March, 1905.

Q. Was that the only purchase you made of him at which he sold below the Red "C"?—A. No, sir.

Q. What other one?—A. January 7, 1905.

Q. At what price did he sell you then?—A. 11¾.

Q. And at that time what was the Red "C" selling for?—A. 12 cents.

Q. Did you make any other purchase of him while he represented the Dixie at a lower price than the Red "C" were selling?—A. Not in 1905.

Q. Well, did you at any time?—A. The Dixie had a man that came up there previous to that.

Q. That was a man by the name of Knight?—A. Yes, sir; that is what he represented his name was.

Q. And he represented the Dixie?—A. Yes, sir.

Q. Did he make a cut price to you also?

Mr. CRAWFORD. I object to this as not being proper rebuttal, not meeting any evidence put in by the defendants, and as opening up new matter.

A. My records show that in 1902, in August, the 16th, I bought two barrels of gasoline at 12 cents and three barrels of oil at 9 cents. That was my first purchase, according to my record.

Q. How did that compare with the Red "C's" price at that time?—A. The Red "C's" price on gasoline was 12½ cents
13909 and Columbia headlight oil 9½ cents.

Q. Did Mr. Wilmer say anything to you as to whether or not the Dixie was an independent company?—A. He did.

Q. What did he say?—A. He said it was independent.

Q. How did he come to say that to you?—A. Well, I can't just recall why.

Q. Had there been any discussion upon that subject there in Rockville as to whether or not the Dixie was an independent company or whether it was controlled by the Standard?—A. When they first came there I had heard very little of them.

Q. Up to the time when Wilmer stated that the Dixie was independent, had there been any talk about it?—A. I think there had.

Q. Did you ask Wilmer whether or not it was independent, or whether the Standard owned it, or did you make any statement to him upon that subject?—A. Yes; we talked the matter over.

Q. Now, you spoke about measuring some of the oil in the barrels in this same lot. Did you ever measure the barrels or the oil in the barrels of the Red "C" at any other time to see whether or not you were getting full measure?—A. Yes, sir; I have.

Q. How many times have you done that?—A. I can remember two occasions.

Q. Before or after the Wilmer transaction?—A. Once before.

Q. And once after, do you mean?—A. I am not quite sure about any more than two different occasions.

Q. Oh, yes. The one was immediately after Wilmer had
13910 made the measurements?—A. Yes; it was very shortly afterwards.

Cross-examination by Mr. CRAWFORD:

Q. You did not remeasure any one of the barrels which Mr. Wilmer measured?—A. No, sir.

Q. Any barrel which you did measure, what method did you adopt for measuring it?—A. I used a gallon measure. Then we had a storage tank that had a self-measuring rod. We can measure every barrel that is in there, irrespective of whether there was any oil in the barrel or not. The gauge-stick in the measuring tank always tells how much oil there is in there.

Q. You mean you pour it out of the barrel into the tank?—A. If you pour it out of the barrel into the tank, it will also indicate what is in there.

Q. Is that what is called a Bowser tank?—A. A Bowser tank.

Q. The makers of that tank do not vouch for its being accurate in the measurement, do they?—A. I don't know whether they do or not.

Q. They do not give any guarantee as to its accuracy, do they, that you know of?—A. I could not recall that, because I did not buy the tank from them. It was bought by my nephew, who was manager of the business.

Q. What did you mean by saying that the barrel overran—the one that you measured?—A. I mean to say that it overran its gauge mark.

13911 Q. That is, it held more than the gauge or held less?—A. It held more than the gauge mark.

Q. At the time that Mr. Wilmer offered to sell you oil, you say you think it was 8 cents a gallon. As I understand, you are not quite sure whether that was the price or not?—A. That would be impossible because I did not make a record of that, you know.

Q. All you really know is that you recollect it was somewhat less than the Red "C's" price?—A. Yes, sir.

Q. Now, you said that the Red "C's" price at that time was 11¼ cents. That is March, 1905?—A. Yes, sir.

Q. I suppose that included the barrel, did it not? You were allowed a dollar for the barrel?—A. Practically a dollar.

Q. So that would reduce the net price to 9¼ cents, would it not?—A. Yes, sir.

Q. And do you recollect what particular brand of their oil it was for which that was the price?—A. The brand of whose?

Q. Of the Red "C's" oil.—A. The Columbia Headlight.

Q. And what one of the Standard's?—A. Sunshine.

Q The Sunshine?—A. The Sunshine oil.

Q. Oh, it was the Dixie, not the Standard, was it? The Sunshine, at any rate, was it?—A. Yes, sir.

Q. You are not quite sure, as I understood you, that Mr. Wilmer's offer on contract was made in March, 1905?—A. I can not say that it was in March. My records show that I didn't buy anything of the people after March.

13912 Q. Then, you are not sure, are you, that the prices you just gave me were the ones that applied at the time he offered you

a contract?—A. It was very near that time. My records do not show that I made any purchase of the Dixie Oil Company after March 20, 1905.

Q. No. You are somewhat uncertain, then, as to whether those were the very prices at the time he made the offer of a contract?—A. It was probably a month after that.

Q. Now, you testified about a purchase from the Dixie on March 20, 1905, at an average of 10½ cents. You say the Red "C" price was 11¼. What kind of oil was it that you bought at 10½ cents? What grade of oil? What brand of oil?—A. From the Dixie people?

Q. Yes.—A. I think it was their Sunshine oil.

Q. You think it was the Sunshine?—A. I don't think I ever bought any other grade than that.

Q. Are you quite sure about it?—A. To the best of my memory I never bought any other grade.

Q. What grade was the Red "C's" 11¼?—A. My universal custom was to buy their Columbia Headlight.

Q. Did you ever buy any of the so-called White "C" oil of the Red "C" Oil Company?—A. I may have bought a barrel once in a year. Generally buy the Red "C," and that very rarely.

Q. You said that Mr. Wilmer said something to you about the Dixie being an independent company. Now, wasn't this what Mr. Wilmer said: That if the Dixie Oil Company was controlled by the Standard Oil Company he didn't know it?—A. Well, he said that he was positive that it was an independent company.

13913 Q. Will you swear he didn't say to you that if the Dixie Oil Company was controlled by the Standard he didn't know it?—A. Yes; he said that.

Q. He did say that. All right. That is all.

13914 WARREN S. DIXON, being duly sworn, as a witness on behalf of the petitioner, in rebuttal, testified as follows:

Direct examination by Mr. MORRISONS

Q. What is your name?—A. Warren S. Dixon.

Q. Where do you live?—A. Baltimore; Highlandtown, Baltimore County, Maryland.

Q. Have you ever been in the oil business?—A. Yes, sir.

Q. When did you start?—A. In the year of 1900.

Q. With whom?—A. William S. Smith.

Q. How long were you with him?—A. From 1900 until the spring of 1901.

Q. Do you know a man by the name of C. G. Purse?—A. Yes, sir.

Q. Did you leave the Smith Company in 1901?—A. Yes, sir.

Q. What time of the year?—A. Somewhere about May, I think it was.

Q. How did you happen to leave that company?—A. Through Mr. Purse.

Q. Did you go to work for Mr. Purse?—A. I did.

Q. What caused you to make the change? What inducement was there, if any?—A. Well, he gave me a difference of about $3.50.

Q. A week?—A. A week, more; yes, sir.

Mr. CRAWFORD. Now, I want to interpose an objection. This
13915 is purely new matter. There is no pretense, I suppose, that this is rebuttal.

Mr. MORRISON. This is rebuttal of Purse. He testified that he did not hire drivers of other concerns.

Q. At that time, Mr. Dixon, was there a company known as the Peuse Oil Company?—A. Yes, sir.

Mr. CRAWFORD. What name is that?

Mr. MORRISON. P-e-u-s-e, is that the way it is spelled?

WITNESS. I don't know exactly whether that is the way you spell it. It is pronounced as the Peuse Oil Company.

Mr. MORRISON. P-e-u-s-s, I think it is.

Mr. CAMPBELL. Where is that in Mr. Purse's testimony; what page, Mr. Morrison?

Mr. MORRISON. I can't tell you, sir. I didn't go over it.

Q. At about the time you went to work for C. G. Purse, did he take over this Peuss Oil Company?

Mr. CRAWFORD. I object to this question on the ground that it is not rebuttal, not in answer to any——

WITNESS. Yes, sir.

Mr. CRAWFORD. Wait a moment. Not in answer to any evidence introduced by the defendant, and opens up new matter. I suppose this objection may be taken to apply to all the examination of this witness?

Mr. MORRISON. Yes. We are leading up to the Home Safety.

Q. Now, what became of the Peuss Oil Company?—A. That I could not tell you. Mr. Charlie Purse taken charge of it. The name was changed to Home Safety Oil Delivery.

Q. The Home Safety Oil Delivery?—A. Yes, sir.

13916 Q. Then, when you started out, you started out for the Home Safety, did you?—A. No, sir; I was supposed to be in business myself, working under Mr. Purse.

Q. Well, who paid you?—A. Mr. Purse.

Q. Did your wagon have any name on it?—A. No, sir.

Q. Were there any peddlers in Baltimore at that time——A. Yes, sir.

Q. Buying independent oil?—A. Yes, sir.

Q. Do you know whether there was a man there by the name of Schmitz?—A. Yes.

Q. Of whom was he buying oil?—A. From the Red "C" Oil Company.

Q. Was he selling to the consumers or to the trade?—A. He was selling direct to consumers—retailing it around the streets.

Q. Did you make any cut in Schmitz's price?—A. Yes, sir.

Q. At whose directions?—A. Mr. Purse.

Q. Mr. C. G. Purse?—A. Mr. C. G. Purse, yes, sir.

Q. At that time was he the manager of the Home Safety?—A. Yes, sir.

Q. How much of a cut did you make in Smith's price?—A. Well, about the difference of a cent.

Q. What customers did you solicit?—A. What customers did I solicit?

Q. Yes.—A. Schmitz's trade, and I was selling for Mr. Schmitz when I left him; I went directly over the same route.

Q. Oh, yes. It is the same Schmitz that you had been working for before?—A. The same one I had been working for before.

13917 Q. You went over his route?—A. Yes, sir.

Q. Did you have any instructions from Purse about Standard Oil customers?

Mr. CRAWFORD. I object to any testimony about instructions from Purse as incompetent, and not binding on these defendants.

A. What was the question you asked?

(The last question was read by the reporter.)

Mr. MORRISON. About soliciting the trade of customers who had bought of stores that sold the Standard oil.

A. Well, you see I was not selling to stores; I was retailing. But I was directed to go after William F. Schmitz's trade alone, and nobody else's.

Q. How long were you on Schmitz's route?—A. Well, that I could not say exactly, but I judge it might have been six weeks, probably longer.

Q. What became of Schmitz?—A. When Mr. Schmitz began to buy oil from the Eagle Oil Company I was notified by Mr. Purse to leave Schmitz's trade alone.

Q. And did you do that?—A. Yes, sir.

Q. What did you next do for Purse?—A. Then I went out after a man by the name of Leo Blank.

Q. Who was Leo Blank?—A. He was an oil peddler.

Q. Of whom was he buying oil?—A. Red "C" Oil Company.

Q. Did you make any cut in the price to Blank's customers?—A. Yes, sir.

Q. How much of a cut?—A. Well in some instances it was

13918 as low as a cent or a cent and a half.

Q. Under whom were you working then?—A. Charles Purse.

Q. What customers did you solicit?—A. Mr. Blank's.

Q. Anybody's else?—A. No, sir.

Q. What effect did your competition have upon Blank?

Mr. CRAWFORD. I object to that question as incompetent. You may ask him what the facts were. The question involves an inference.

Q. What became of Mr. Blank?—A. Mr. Blank bought oil from the Eagle Oil Company and I was notified to stop going on his route.

Q. Up until the time he bought of the Eagle did you follow his route?—A. I did.

Q. And make these cuts?—A. I did.

Q. Did you get any of his customers away from him?—A. I did.

Q. About what percentage or proportion of his trade did you secure?—A. Well, I judge half of it, anyhow.

Q. You said you made cuts as low as a cent and a half?—A. Yes, sir; a cent or a cent and a half.

Q. Did you or Purse give away oil in any instance to his customers?—A. Mr. Charles Purse did to one customer that I can remember.

Q. One of Leo Blank's customers?—A. Yes, sir.

Q. After you quit following Leo Blank, what did you next do?—A. I was notified by Mr. Purse to follow Mr. Reuhl.

Q. Who was Reuhl?—A. An oil peddler.

Mr. CRAWFORD. When was this?

Q. About when was this that they started on Reuhl?—A. About 1901.

13919 Q. What time of year?—A. In the fall, I think it was.

Q. Of whom was Reuhl buying oil?—A. Red "C" Oil Company.

Q. How long did you follow Reuhl?—A. I judge about a month and a half or two months; probably longer than that.

Q. Were you able to make much headway against him?—A. No, sir.

Q. Did he remain on his route and continue to buy oil from the Red "C"?—A. He did.

Q. What did you do next?—A. Do you mean after I stopped Mr. Reuhl?

Q. Yes.—A. After I stopped on Mr. Reuhl's route?

Q. Yes.—A. Then I went in the Singer sewing machine business.

Q. And how long were you with the Singer sewing machine people?—A. Up until the fall of 1902.

Q. Then what did you do?—A. I went back to work for the Home Safety Oil Delivery.

Q. Who was managing it then?—A. Mr. Bamert.

Q. What did you do while the Home Safety was under Mr. Bamert's management?—A. I drove a retail wagon.

Q. What customers did you solicit?

Mr. CAMPBELL. What testimony is he answering now, Mr. Morrison?

Mr. MORRISON. Blaustein.

Mr. CRAWFORD. Why, not at all. Blaustein didn't testify to anything of that sort. It's absurd.

Mr. MORRISON. Well, whoever the manager of the Home Safety was at that time.

Mr. CRAWFORD. It is not answering anybody. It is new matter, of course.

13920 Mr. MORRISON. Oh, no; you had testimony here that the Home Safety never cut the price.

Mr. CRAWFORD. Oh, nonsense!

Mr. MORRISON. That is what you claimed and what you claim now.

Mr. CRAWFORD. Now, you are not so absurd as to suppose that this is rebuttal.

Mr. MORRISON. I am.

Mr. CRAWFORD. Well, we will test the question.

The last question and answer were read.

Q. For whom?—A. For the Home Safety Oil Delivery.

Q. What trade did you solicit?—A. Anywhere.

Mr. CRAWFORD. Wait a moment. I move to strike out the answer of the witness, and I renew my objection to the testimony of this witness on the ground that it is not rebuttal and opens up new matter.

Q. You solicited all customers and all trade?—A. Yes, sir.

Q. At that time?—A. Anywhere at all that you could sell the oil in a certain territory that they laid off. Each wagon had a certain territory to work in.

Q. Did you sell there at a cut price?—A. No, sir; sold at the regular market price.

Q. How long before you quit that position?—A. Well, I was only there with him about two months, I think, under Mr. Bamert's management.

Q. And did you go back to the Home Safety again?—A. Yes, sir; in the next year.

13921 Q. Did you at any time work for Mr. Blaustein?—A. Yes, sir.

Q. When was that?—A. The year of 1904 and 1905.

Q. When did you commence?—A. In the year 1904, about February, I think; the latter part of February or March.

Q. What did you do?—A. Drove a tank wagon.

Q. Was that the first work you did for Blaustein?—A. Yes, sir.

Q. Did Mr. Blaustein tell you what customers you were to sell to and what trade you were to solicit?—A. Yes, sir.

Q. What did he tell you about that?—A. He instructed me to go after the Crew-Levick Oil Company's business.

Q. At what prices did you sell as compared with the prevailing price of the Standard Oil Company?—A. A rebate of about a half to three-quarters of a cent below the Standard market price.

Q. Did you pay this rebate in cash or how was that handled?—A. Yes, sir; I paid it right out as the oil was bought.

Q. As the oil was bought?—A. Yes, sir.

Q. Did you give tank-wagon tickets?—A. Yes, sir.

Q. To the purchaser?—A. Yes, sir.

Q. Did those tickets show the regular market price——A. They did.

Q. Or did they show the actual price that you charged?—A. They showed the regular Standard Oil Company market price.

Mr. CRAWFORD. I move to strike out the testimony of the witness in regard to tank-wagon tickets not produced, as giving the contents of written documents.

Q. And when you settled with the customer, how did you settle with him?—A. Simply taken and deducted half a cent on whatever

13922 was to come off the bill and collected the balance.

Mr. CRAWFORD. I move to strike out that answer, on the same ground.

Q. Now, did Blaustein say anything to you as to whether or not this company was owned and controlled by the Standard?—A. He told me that it was not.

Q. What company was Blaustein managing?—A. The Eagle Oil Company.

Q. You say that Blaustein told you to solicit the trade of Crew-Levick Company's customers?—A. Yes, sir.

Q. How did you know who those customers were?—A. Because Mr. Blaustein told me where they were at; showed me a list of them.

Q. Did you at any time follow any of the Crew-Levick's drivers to get a list?—A. No, sir.

Q. You got your names from Mr. Blaustein?—A. Yes, sir.

Q. Did you go to any other trade aside from the Crew-Levick trade?—A. Not in particular. We were instructed not to bother with the Standard Oil Company's trade only at straight basis.

Q. What do you mean by straight basis?—A. Straight market prices.

Q. Oh, yes. You did make some sales to Standard customers, did you?—A. Yes, sir.

Q. But when you sold to a Standard customer you charged the open market price?—A. Yes, sir; the same price that the Standard Oil Company sold.

Q. Did you give any rebate back to them?—A. No, sir.

Q. Did you make any effort to get that trade?—A. Not in particular; no, sir.

13923 Q. At this time how many wagons did the Eagle have on the streets?—A. That I could not tell. Maybe five or six; I think it was six—or five.

Q. Were you instructed by Blaustein to go after the Red "C" Oil Company's customers?—A. No, sir. In only one instance was I instructed to go after the Red "C" Oil Company's customers.

Q. In what instance was that?—A. That was a man by the name of Langfelder, on Williamson street.

Q. Did you get that one customer?—A. Yes, sir.

Q. Did you make a cut price to get him?—A. Half a cent.

Q. In the form of a rebate?—A. Yes, sir.

Mr. CRAWFORD. What is that name—Langfelder?

WITNESS. Langfelder. I think that is the man's name. 27 Williamson street, Baltimore.

Q. Do you remember a man by the name of John Moore?—A. No, sir.

Q. Do you know whether the Eagle gave rebates to all of its customers?—A. To all of them?

Q. Yes.—A. No, sir; I could not say that.

Q. Did it to all the customers that you served?—A. No, sir; not to all.

Q. To what customers did it pay a rebate?—A. Well, I could name you about five or six, to my knowledge, that received a rebate. There was a man by the name of Lang, at 700 Fort avenue; another one by the name of A. Lang, 1401 Andrews street.

Mr. CRAWFORD. What is that? "A." initial, you mean?

13924 WITNESS. Yes, sir; A. Lang. Another one by the name of F. Wagner, 1600 Clement street; another one by the name of E. R. Krieling, 1401 Hull street; Matheze Brothers.

Mr. CRAWFORD. How do you spell that?

WITNESS. M-a-t-h-e-z-e.

Q. Were there others whose names you are not now able to give?—A. Well, if I would think, I might be able to give you some more, but that is all I can just call to my mind at the present.

Q. There were others, were there?—A. I think there were.

Q. How long did you remain with the Eagle?—A. Up until June, 1905.

Q. And then did you go out of the oil business for a while?—A. Yes, sir.

Q. For how long?—A. I was out of the oil business then from June up until the 9th day of April, in 1906.

Q. And then where did you go?—A. Went to work for the Crew-Levick Company.

Q. What were you doing between the time that you left the Eagle and the time that you went to work for Crew-Levick?—A. Well, about seven weeks—five or seven weeks—I was in Cumberland.

Q. Were you doing anything there?—A. No, sir. Well, I was working a short time in the rail mill up there.

Q. Did you have any other occupation?—A. No, sir; until I came back to Baltimore.

Q. When you came back to Baltimore what did you do?—A. Why, I went to work for the National Flour Company.

13925 Q. And how long were you with them?—A. From, I think it was, somewheres along in October, when I went to work for them, and worked for them up until the latter part of February, in 1906.

Q. And that is when you went to work for Crew-Levick?—A. No, sir. I went on the cars.

Q. Oh, yes; on the street cars?—A. Yes, sir.

Q. And were you a motorman?—A. No, sir; I was a conductor.

Q. And when you were hired by the Crew-Levick people you were a conductor, were you?—A. Yes, sir.

Q. And quit that place to go with the Crew-Levick people?—A. Yes, sir; I did.

(An adjournment was here taken until the morning of Friday, January 8, 1909, at 10.30 o'clock.)

13926 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Friday, January 8, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Charles B. Morrison; on behalf of the defendants, Mr. F. L. Crawford, Mr. Douglas Campbell.

WARREN S. DIXON, recalled.

Cross-examination by Mr. CRAWFORD.

Q. Mr. Dixon, how old a man are you?—A. 27. I will be in February.

Q. How long have you lived in Baltimore?—A. Why, I think since about 1888 or 1889, when I came to Baltimore.

Q. Are you a married man?—A. Yes, sir.

Q. Have you children—A. Yes, sir.

Q. How many?—A. I have four living.

Q. How long have you been working for the Crew-Levick Company?—A. I started with the Crew-Levick on the 9th day of April, in 1906.

Q. And have you been working for them ever since?—A. Yes, sir.

Q. What is your pay?—A. That I receive from the Crew-Levick Company?

Q. Yes.—A. Twelve dollars a week.

13927 Q. Is that the amount you have been getting all the time, or have you been raised since you went with them?—A. No, sir; $12 a week is all I ever received from them as a salary.

Q. And is that the only income that you have—A. Yes, sir.

Q. So that you are dependent upon your salary from the Crew-Levick Company for support, are you?—A. Yes, sir.

Q. And for the support of your wife and children?—A. Yes, sir.

Q. And if you lost your position with Crew-Levick & Company in the middle of the winter it would be rather hard on your wife and children, wouldn't it?

Mr. MORRISON. Oh, I object to that.

A. Not exactly. I guess I could make a living somewhere else.

Mr. MORRISON. I object to that line of testimony as wholly incompetent and almost nonsensical.

Mr. CRAWFORD. Well, we will see about that.

Q. Who is your manager there in Baltimore?—A. Who for—the Crew-Levick?

Q. Yes.—A. Mr. George J. R. Wolff.

Q. Wolff?—A. Yes, sir.

Q. When did you first learn that you were to be called as a witness here?—A. Why, the 6th day of January, 1909.

Q. That was Wednesday of this week?—A. Yes, sir.

Q. How did you learn?—A. I was notified.

Q. By whom?—A. By telephone message, out on the route.

Q. A telephone message from where?—A. From the office.

Q. The office of Crew-Levick & Company?—A. Yes, sir.

Q. What person telephoned to you?—A. The clerk at the
13928 office.

Q. What did he say?—A. He told me that I was wanted in New York.

Q. To testify in this case?—A. Yes, sir.

Q. Did he tell you who the orders came from?—A. No, sir.

Q. Did he tell you they came from Mr. Wolff?—A. No, sir.

Q. Did you talk with Mr. Wolff about your testimony that you were going to give up here?—A. When?

Q. At any time since you were notified; at any time since that telephone message came.—A. No, sir; I never saw Mr. Wolff until Wednesday night about 12 o'clock, after I reached New York, or had anything at all to say to him.

Q. You didn't talk to him after you met him here in New York?—A. Of course I talked to him, but nothing in regard to this testimony.

Q. You were not subpœnaed, then?—A. Where?

Q. Anywhere.—A. Yes, sir.

Q. To appear in this case?—A. Yes, sir.

Q. Where were you subpœnaed—here in New York?—Yes, sir.

Q. After you got here?—A. Yes, sir.

Q. You were not subpœnaed from Baltimore?—A. No, sir.

Q. You came here from Baltimore under the direction of Crew-Levick & Company?—A. Yes, sir.

Q. Then here you received a subpœna?—A. Yes, sir.

Q. Now, you testified that in 1900 you were in the employ of a Mr. William S. Smith.—A. Schmitz.

Q. Schmitz?—A. Yes, sir.

Q. The minutes here of your testimony speak of a man
13929 named Smith and also a man named Schmitz. Were they the same person?—A. Smith? No, sir. I never said anything about a man by the name of Smith. Schmitz.

Q. I can only tell as the stenographer took you down.—A. Yes, sir.

Q. So I am not the one who is at fault in saying what I do. I say that the stenographer's minutes make you speak of two different persons. I want to know whether that is correct. One is put down as "S-m-i-t-h," and the other is named "S-c-h-m-i-t-z."—A. Schmitz is the right man.

Q. Was there but one?—A. That is all.

Q. I mean so far as your testimony is concerned?—A. Yes, sir.

Q. You were testifying about a single person?—A. Yes, sir.

Q. Whether it is put down here as "Smith" or "Schmitz" it was the same man you were testifying about?—A. Yes, sir; Schmitz.

Q. All right. Now we understand ourselves. Do not imagine that it is I who am trying to confuse the thing. The stenographer did not understand, and we were all a little mixed yesterday afternoon. Now, then, it was a Mr. William Schmitz—S-c-h-m-i-t-z?—A. Yes, sir; that is the man.

Q. Whom you were employed with from 1900 to 1901? Was he a relative of yours?—A. He is not exactly. It is kind of a family concern. His wife and my brother-in-law are brother and sister.

Q. I see.—A. Yes, sir. No direct——

Q. No blood relation?—A. No, sir; none at all.

Q. But a family connection?—A. That is it.

13930 Q. You had been acquainted with him, I suppose, for a long time, had you?—A. No, sir; not until 1900.

Q. Well, you were connected in that way that you stated. Now, what was the character of his business?—A. Why, peddling oil around the streets to consumers.

Q. Peddling to consumers?—A. Yes, sir.

Q. In what part of Baltimore did he peddle it?—A. He peddled it through North Baltimore and East Baltimore, South Baltimore.

Q. And how many customers did he have?—A. Well, now, I couldn't exactly tell you.

Q. Well, about?—A. I couldn't give you any exact amount. I suppose that, all told, he has about somewheres near one hundred, more or less.

Q. They were householders, were they—that is, people in houses?—A. Yes, sir; private families.

Q. Consumers?—A. Private consumers; yes.

Q. How much was he paying you when you were with him?—A. He was giving me $2 a week and board for myself and wife.

Q. Two dollars?—A. Yes, sir.

Q. That was rather small pay, wasn't it?—A. Well, it was; yes, sir.

Q. Pretty hard to get along on that?—A. Well, he was giving board for myself and wife, you understand. I had two dollars, and, besides, Saturday night work.

Q. Well, that wasn't large pay, was it?—A. No, sir; not very large.

Q. You went to see Mr. Purse to see if you could not get a

13931 position with him at better pay, didn't you?—A. No, sir.

Q. You went to see whether you could get a position, didn't you?—A. No, sir.

Q. Well, you took a position with him, anyway?—A. Mr. Purse came after me.

Q. Where were you when he came after you?—A. He met me on the street—on Hanover and Austin street—on the wagon. He was on one wagon and I on the other.

Q. Well, you took a position with him, anyway?—A. I did.

Q. And what did he pay you?—A. He paid me $9 to start on.

Q. What is that—a dollar and a half a day?—A. Yes, sir.

Q. Are you sure it wasn't a dollar and a quarter a day?—A. No, sir.

Q. Quite sure of that, are you?—A. Positively.

Q. That nine dollars was better pay than you had before, wasn't it?—A. Well, not so very much, because I then left Mr. Schmitz and

went for myself, room-keeping at the same time; I thought I would get along better on it.

Q. When you had left Mr. Schmitz and went room-keeping, as you call it, what were you then being paid by Mr. Schmitz?—A. When I was room-keeping?

Q. Yes.—A. I was receiving $6 a week.

Q. Well, $9 a week was better than six, wasn't it?—A. Yes, sir.

Q. And six was pretty small pay for a good American to support himself and wife on, wasn't it?—A. Yes, sir.

Q. $9 was more reasonable pay for a man like you?—A. It was.

Q. You were very glad to get that much better pay, weren't you?—A. Well, I wasn't anyways over-anxious for it, but at the same time if it was offered to me I would take it.

13932 Q. Naturally you would, under the circumstances. If you hadn't thought it was better, why did you leave your relative—it wasn't a relative, but he was a connection of yours—why did you leave him if you didn't think you were not getting money enough before?—A. Why did I leave him?

Q. Yes.—A. Because I thought I was bettering my position.

Q. Didn't you feel at the time that the pay you were getting was altogether too small—$6?—A. I certainly did.

Q. Yes. Of course, naturally. Anybody would. Now, did Mr. Schmitz have any other business than this peddling route?—A. Yes, sir.

Q. What was the other business?—A. Grocery business.

Q. Did he have more than one wagon on the peddling route?—A. No, sir.

Q. After you left him did he continue the peddling route?—A. He did.

Q. With another driver?—A. Yes, sir.

Q. Now, when you were employed by Mr. Purse, he was then managing the Peuss Oil Company, wasn't he?—A. Not when I had taken the position, he wasn't.

Q. Had it then become the Home Safety?—A. Yes, sir; after I was hired, before he had taken charge of it, to my knowledge.

Q. Then, when you entered his employment and took up charge of the wagon it was under the name of the Home Safety, was it?—A. No, sir; the wagon that I run wasn't.

Q. Well, he was managing the Home Safety, was he?—A. Yes, sir.

13933 Q. Was the name on the wagon that you had "Peuss Oil Company?"—A. The first one I drove out of the yard had on "Puess Oil Company," but it was so far gone that you would not be able to read it unless you went and rubbed the dirt off of it.

Q. Well, it was one of the old Peuss wagons?—A. It was, the first one; yes, sir.

Q. Now, didn't you sell on the route at fixed prices? Didn't you have a fixed price to sell?—A. Had a fixed price?

Q. Yes.—A. By Mr. Purse.

Q. Didn't you post your prices on the wagon?—A. No, sir; not on the wagon that I ran.

Q. At any time?—A. At any time? Not under Mr. Purse.

Q. You did that afterwards, didn't you, as the Home Safety?—A. Under Mr. Baumert and Mr. Harris.

Q. The price at which you sold, was that a uniform price that you sold at to everybody?—A. No, sir.

Q. What trade did you solicit there when you were employed by Purse, when you first went out? Was it only the trade of this man Schmitz?—A. Yes, sir.

Q. The man you had formerly been working with?—A. Yes, sir; that is the man.

Q. And no one else?—A. No, sir.

Q. You visited all of that trade, didn't you?—A. I did very near.

Q. And you skipped every other house?—A. I skipped every other house. I simply went to the trade that I had been working
13934 for Mr. Schmitz. Of course in several cases, houses next door to each other, friends naturally buying oil cheaper from me than they could get it from anybody else, I had to sell them—the whole Schmitz trade.

Q. Well, were not some of them customers of the Standard?—A. Not to my knowledge.

Q. You don't know that they were not, do you?—A. The customers that I served?

Q. These other customers that you served in the adjoining houses—well, no; I see I have made a mistake. You did not receive any instructions from Mr. Purse in regard to Standard Oil customers, did you, because the Standard Oil has no customers among the consumers?—A. Not directly, only through stores, probably, where they were wholesaling it to stores.

Q. Well, they did not have any direct customers, did they?—A. No, sir; not to my knowledge.

Q. So you could not have been instructed not to go after Standard Oil customers, could you?—A. No, sir; but I was instructed——

Q. Wait a minute. I will come to that in a moment. Now, as far as people being customers of the Standard Oil Company, how do you know that these people in these private houses which joined Schmitz customers were not customers of the Standard Oil stores?—A. I didn't say that I did know, did I?

Q. You don't know, do you?—A. No, sir.

Q. Now, did you sell or offer to sell to all of these old customers of Schmitz at the same price?—A. At the same price of what?

Q. Of oil.—A. I know; but what price are you speaking of?
13935 Q. Well, at a uniform price—A. I had no uniform price.

Q. Do you mean to say you sold to Schmitz's customers at different prices?—A. I did.

Q. At what price did you sell?—A. I can't just call that to my recollection, but it was anywhere from a cent to a cent and a half below the average store price, the average retail market.

Q. Do you mean anywhere from a cent to a cent and a half?—A. Yes, sir.

Q. But that was the range, was it?—A. Yes, sir.

Q. Do you mean, then, that to some you gave a cent below and to some you gave a half cent?—A. Yes, sir; and some a cent and a half.

Q. Oh! Now you say that it was from half a cent to a cent and a half?—A. No, sir; I said from a cent to a cent and a half.

Q. Then to some you gave a cent and to some a cent and a cent and a half?—A. Yes, sir.

Q. So that there was a difference of half a cent in the price at which you sold?—A. There was a difference of a cent to a cent and a half below the retail market.

Q. Do you mean to say that there was a difference of half a cent as between the customers to whom you were selling?—A. Yes, sir.

Q. Did you sell to any at a cent and a quarter?—A. No, sir.

Q. How large an amount did you usually sell to those people at one time? What was the ordinary amount?—A. To each and every one?

13936 Q. Yes.—A. Well, a gallon, two gallons, etc. Nothing less than a gallon.

Q. Usually a gallon wasn't it?—A. Yes, sir. Some three gallons.

Q. How would you manage to sell at a fraction of a cent, when you were selling only a gallon?—A. How would I manage what?

Q. What was the regular retail price there at that time?—A. I couldn't say, but I judge it was something about 10 cents, if I am not mistaken; 9 or 10 cents.

Q. What do you mean by the regular retail price?—A. The general store price, what the stores retailed it for, and what the Home Safety Delivery was retailing it for.

Q. You say it was 10 cents?—A. I did not say 10; I said about 9 or 10.

Q. You can't tell with any more certainty than that?—A. No, sir.

Q. Are you sure that it was not 11?—A. I wouldn't answer that.

Q. Are you sure it wasn't 8?—A. I wouldn't answer that.

Q. You don't know what the price was?—A. I don't know exactly what the price was at that time.

Q. You don't anywhere near what it was, do you?—A. I certainly do.

Q. Well, what was it?—A. It was in between 9 and 10 cents, I think.

Q. But you have just said you didn't know but that it was 8.—A. I said I wouldn't give you a positive answer on it, be-

13937 cause I am not certain.

Q. You will not swear that it was not 11?—A. No; I will not.

Q. So you are all in the air about it? Suppose, however, that the price was 10 cents, then do you mean to say you would sometimes sell to customers for 8½ cents?—A. For 8½?

Q. Yes.—A. Yes, sir.

Q. How could you sell a single gallon for 8½ cents?—A. We would charge 9 cents for it, if they only bought a single gallon. If they bought 2 gallons, we would charge 17 cents.

Q. For two gallons they would get a better price, would they?—A. They would get two gallons for 17 cents.

Q. But if they only got one gallon, there would be a cent difference, would there?—A. Yes, sir.

Q. You said something about a man named Leo Blank. His trade was out in one of the suburbs of Baltimore, wasn't it?—A. Yes, sir.

Q. When you went out into that suburb to get business, do you recollect having some difficulty about a license?—A. I do.

Q. You were stopped, were you not, once, or more times, by an officer?—A. I remember once.

Q. And you were notified that you must not continue without having a license there?—A. Not me. Mr. Purse was along at that time.

Q. Well, Purse was notified, then, wasn't he?——A. Yes, sir.

Q. ——That he must not continue there without a license. How long after that did you stop going there—immediately?—
13938 A. No, sir; that was the beginning of it. It was shortly after we first went over there that this thing happened that you are speaking of.

Q. Do you mean that you went on and sold without a license at all?—A. I couldn't say. I suppose Mr. Purse attended to that matter. I had nothing at all to do with that. I know I kept going over there.

Q. How long did you continue to go there?—A. I couldn't say. Probably six to eight weeks, or five weeks, or something lie that; in between that. I guess it was that long—five to eight weeks or something; probably a little longer.

Q. Now, when you were employed by Blaustein—you said in February or March, 1904—you said you got a customer named Lang and another one named A. Lang, if I understood you. Do you know whether they had been customers of the Eagle Oil Works before that?—A. Yes, sir; A. Lang was, but Lang on Fourth avenue wasn't.

Q. A. Lang had been, hadn't he?—A. Had been—on a rebate.

Q. What do you mean by that?—A. He was getting a margin off the oil from the Eagle Oil Company; below the market price.

Q. He had been a customer of the Eagle, had he not?—A. Yes, sir.

Q. And the Crew-Levick Company had gotten him away from the Eagle, hadn't they?—A. No, sir; not to my knowledge.

Q. He had gone over to the Crew-Levick, hadn't he?—A. No, sir.

Q. Wasn't he a Crew-Levick customer at the time you got him here?—A. He was, under these conditions——

Q. Now, wait a minute. Answer my questions, please.
13939 You can make your explanation to Mr. Morrison, if you want to. You say he had been a customer of the Eagle?—A. Yes, sir.

Q. At the time you went and tried to get his trade and did get it he was a customer of Crew-Levick?—A. He was buying partly from Crew-Levick when I taken the wagon.

Q. Very well; partly from them and partly from who else?—A. The Eagle.

Q. He was buying at least a part from Crew-Levick?—A. Yes, sir.

Q. So that Crew-Levick had gotton at least a part of his business from the Eagle?—A. No, sir; the Eagle had got part of the business away from the Crew-Levick.

Q. Do you mean he had always been a Crew-Levick customer?—A. Yes, sir.

Q. How do you know that?—A. Because he told me so.

Q. That is the only way you know, isn't it?—A. Yes, sir.

Q. Well, what about Krieling? Hadn't he originally been an Eagle customer?—A. He was buying on the same conditions as Mr. A. Lang.

Q. Well, hadn't he been an Eagle's customer?—A. He was buying from the Eagle——

Q. Stop! Answer the question.—A. I am trying to answer the question.

Q. Had he or not been an Eagle's customer?—A. He was buying from the Eagle when I taken the wagon.

Q. He was an Eagle customer?—A. Yes, sir.

Q. And then Crew-Levick took him away, didn't they?—A. Not to my knowledge they did not.

Q. Wasn't he a customer of Crew-Levick when you went out
13940 to get him?—A. He was buying part from the Crew-Levick.

Q. Then they had got part of his business away?—A. Yes, sir; so far as I know.

Q. The Crew-Levick had gotten part of his business away from the Eagle?—A. I don't know whether Crew-Levick had got the business away from the Eagle, or the Eagle from the Crew-Levick, but both companies were serving the store when I taken the wagon.

Q. How about Matheze Brothers, whom you mentioned as having been paid a rebate? Were they buying from Crew-Levick at the time you first went after their business?—A. Yes, sir; they were buying from the Crew-Levick.

Q. Hadn't they previously been buying from the Eagle?—A. Yes, sir; both wagons were selling at the store, the same as at Krieling's and Lang's.

Q. You went to the Crew-Levick in June, did you say, 1906?—A. No, sir; I said April, 1906.

Q. You have been driving a tank wagon since then?—A. Yes, sir.

Q. Whereabouts is your trade?—A. I have been on two different routes since I have been with the Crew-Levick Company. The first route that I was on was territory in West Baltimore, Northeast Baltimore, and out through the suburbs of Remington and Hampden; and the second route, that I am on at the present time, lies in Southwest Baltimore, Westport, Mount Winans; also South Baltimore.

Q. Are you serving any customers whom you formerly served when you were in the employ of the Eagle Oil Works?—A. I am.

13941 Q. How many?—A. I guess there is about fifteen or sixteen, may be; or may be twenty.

Q. Now, when you were employed by the Crew-Levick Company, you went out and canvassed your own trade, didn't you?—A. No, sir; not when I was employed by them I did not. I was put on a different territory altogether.

Q. When were you put back on the same territory?—A. About two months ago I guess.

Q. Only about two months ago?—A. Yes, sir.

Q. When you were put back on the same territory, you went back and canvassed your old trade, didn't you?—A. Yes, sir.

Q. Did Mr. Wolff tell you to do so?—A. No, sir.

Q. Who did tell you?—A. No one at all. Just on my own——

Q. Well, you did it, anyway?—A. Yes, sir.

Q. How many of your old customers did you go to see?—A. I guess I went to see very near every one of them.

Q. How many were there, fifty or a hundred?—A. Not that many.

Q. Fifty?—A. No; about twenty, something like that, a little more.

Q. And you got about twenty?—A. No; I——

Q. You said you got about twenty, a while ago.—A. I said I was selling twenty. I didn't take them away, on this wagon.

Q. You were selling about twenty?—A. Yes, sir; or more.

Q. And those were about all you had?—A. When?

Q. You said just now that when you were put on your old route you canvassed your old customers?—A. I did.

Q. And that there were about twenty of them?—A. There

13942 is about twenty of them or more that I am selling at the present time, that I did sell when I was on the Eagle wagon.

Q. That is, there were about twenty of your old customers, in all, were there, on that route?—A. Or more.

Q. Twenty or more?—A. Yes, sir.

Q. Well, how many more?—A. I don't know. I couldn't say. I never sat down and figured them up. But I judge I have got about thirty-eight stops on that route, something like that, thirty-eight or forty.

Q. And when you went on your old route, two weeks ago, you went and canvassed all of those thirty-eight people, did you?—A. Did I go to them all?

Q. Yes.—A. I don't think I went to them all; that is, all of the old customers.

Q. I mean your old customers.—A. No, sir; I did not. There was only a few, you may say about twenty or more, that I went to and tried to get the business.

Q. Well, you got, then, all that you went to, did you?—A. No, sir; I did not.

Q. Well, you got twenty, you said.—A. Yes, sir; I got twenty or more that I was selling. Mind you, some of those customers were buying of this wagon before I taken it.

Q. Well, you went, at any rate, and got back a considerable number of your old customers, did you?—A. Oh, nothing to talk about; maybe four or five that were not buying off this wagon.

Q. You went, however, to more than twenty?—A. Yes, sir.

Q. And asked them to buy of you?—A. Yes, sir.

Q. That is what you now say?—A. Yes, sir.

13943 Q. So you tried your best to get all of the old customers?—A. Certainly.

Q. And you got some of them?—A. I did.

Q. And those the Crew-Levick Company has now?—A. Yes, sir.

Q. So you have done your best to get for the Crew-Levick Company all the customers you formerly sold for the Eagle or the Standard, have you?—A. I certainly did.

13944 WILLIAM J. METZEL, recalled in behalf of petitioners in rebuttal, testified as follows:

By Mr. MORRISON:

Q. What is your full name, Mr. Metzel?—A. William J. Metzel.

Q. Where do you live?—A. At Glyndon, Baltimore County, Maryland.

Q. What is your business?—A. Salesman for the Red "C" Oil Company.

Q. How long have you been salesman for that company?—A. Since June 1, 1890.

Q. Do you know J. B. Benson, of Grafton, Maryland?—A. I know J. W. at Grifton, Maryland.

Q. Mr. Wilmer testified that he gauged some of Benson's barrels that were sent to him by the Red "C." How long have you been selling Mr. Benson?—A. Every since I have been with the Red "C" Oil Company.

Q. Do you know whether he has bought all of his oil of you?—A. Not entirely all, but most of it.

Q. Did Mr. Benson ever notify you that his barrels had been gauged by Mr. Wilmer?

Mr. CRAWFORD. I object to that as calling for hearsay.

Q. I am not asking what he said to you, but whether he notified you?

Mr. CRAWFORD. The word "notify" is a communication of information, and in this instance calls for hearsay; and I object to it.

13945 Q. Go ahead.—A. I never knew of any barrels——

Q. No—just answer the question.

The question was read as follows: "Did Mr. Benson ever notify you that his barrels had been gauged by Mr. Wilmer?"

A. No, sir.

Q. Have you been calling on him right along?—A. I have——

Mr. CRAWFORD. I object to that.

WITNESS. ——been.

Mr. CRAWFORD. Now, your honor, I don't want to get heated at certain methods, but I would like to have your honor instruct this witness to wait until I have an opportunity to object.

The EXAMINER. I think that is a very proper request. [To the witness.] Don't be in such a hurry to answer the question that counsel on the other side does not have an opportunity to get his objection on the record before you give your answer.

Mr. CRAWFORD. Thank you, very much.

Q. Have you been selling him right along at every call?—A. I have.

Mr. CRAWFORD. I object to that.

The answer of the witness and the objection by Mr. Crawford were stated substantially simultaneously.

Mr. CRAWFORD. Now, then, if your honor please, I ask you to instruct the stenographer to put my objection in ahead of that answer. Will you so instruct him?

The EXAMINER. He has not answered yet.

Mr. CRAWFORD. Yes, sir; he has answered. I don't know
13946 whether the stenographer got it down.

Mr. MORRISON. Oh, I am perfectly willing——

Mr. CRAWFORD. I wish to object to that as immaterial and irrelevant.

The EXAMINER. You may strike out his answer and repeat it, then.

Mr. MORRISON. Wherever the witness answers——

The EXAMINER. Of course, Mr. Crawford, you understand, the stenographer——

Mr. CRAWFORD. I am not complaining of the stenographer, sir.

The EXAMINER. The stenographer may not understand even the sense of what he is taking down.

Mr. CRAWFORD. I understand, sir.

The EXAMINER. He is following his ears.

Mr. CRAWFORD. I understand, sir.

The EXAMINER. But I will try and keep the witness in line so as to give you an opportunity to object.

Mr. MORRISON. We are perfectly satisfied that where the witness answers too quickly and then the objection comes in that the stenographer may put the objection in ahead of the answer.

Q. When did you last call upon Mr. Benson?

Mr. CRAWFORD. I object to that as immaterial.

Q. Answer the question.—A. December 8, 1908.

Q. Did you make a sale to him at that time?—A. I did.

Q. In barrel shipments?

Mr. CRAWFORD. I object to this as not rebuttal, opening up
13947 new matter, and immaterial.

A. I did.

Q. Mr. Eitel testified that at Deal's Island, Maryland, he found two Red " C " barrels over-gauged. Did you ever have any complaint

from any of the dealers at Deal's Island about the over-gauging of your barrels? (Don't wait to invite him to object.)—A. No, sir.

Q. You can tell whether the attorney on the other side wants to object or not without waiting very long.—A. No, sir; never had any objections from Deal's Island about the over-gauging of barrels.

Q. Are you selling, and have you been right along, to the same customers there for some time?—A. We frequently sell oil at Deal's Island.

Q. Have you lost any customers there by any claim that there was over-gauging of barrels?—A. Never did.

Q. Were you ever notified by anybody in the trade there that any of your barrels had been gauged and had been found to be over-gauged?

Mr. CRAWFORD. I object to that as hearsay.

A. No, sir.

Q. When were you there last?—A. I never was there. We don't have a salesman go there; it is done by correspondence in the office.

Q. Mr. Waters, a travelling salesman for the Standard, testified that he was in the store of Barnes & Snader, at New Windsor, Maryland, and that he heard you say that the Red "C" oil was a
13948 natural product, just as it came out of the ground, and that you had made this statement to other storekeepers, and that he (Waters) contradicted it and got four or five customers in that town. Do you remember any such occurrence as that?—A. No, sir.

Q. Were you ever in Barnes & Snader's store when Mr. Waters was there?—A. Not that I know of.

Q. Did you ever state that the Red "C" oil was a natural product, just as it came out of the ground?—A. No, sir.

Q. Did you ever say that to anybody?—A. No, sir; because it was not so.

Q. Well, just answer the question.—A. No, sir.

Q. Did you make that statement, either in Barnes & Snader's store or to any other storekeepers in that town?—A. No, sir.

Q. Did you lose four or five customers there at any time?—A. No, sir.

Q. Did you lose any customers there at any time?—A. I lost one customer there temporarily, just for a few weeks.

Q. Did he return to you again?—A. Yes, sir.

Q. Did you make any explanation to your trade as to what the Red "C" oil was?—A. Yes, sir.

Q. What explanation did you make to the trade?—A. I always told the trade that the Red "C" oil was the White "C" oil colored, that they were one and the same oil, except one was red and the other was white.

Q. Did you ever tell your trade or anybody in your trade anything different from that?—A. I did not.

Q. At any time or place?—A. At no time and at no place.

Q. Did you distribute any literature in reference to these
13949 oils to your trade?—A. Yes, sir.

Q. Is that the same that was introduced in evidence here, while Mr. Fehsenfeld was on the stand?—A. The same thing.

Q. Anything else aside from that?—A. No, sir.

Q. Mr. Parran says that in July, 1907, the Red "C" Oil Company, at Perryville, Maryland, made a cut of half a cent on gasolene to a merchant there, not giving his name. He says that the Red "C" sold gasolene at 13½ cents a gallon in bulk, when the Standard's price from the wagon was 14 cents a gallon. What was the price at Perryville in July, 1907, of gasolene?—A. Our price?

Q. Yes, or any other price.—A. It was the same as the Standard Oil Company's price, whatever that was, at Perryville.

Q. Did you make any sale there?—A. Yes, sir.

Q. To whom?—A. A. H. Owens & Brother.

Q. That was in July, 1907?—A. Yes, sir. It was made by our agent at Havre de Grace, Maryland.

Q. How far is Havre de Grace from Perryville?—A. Just across the Susquehanna River; the other side.

Q. Do you know whether the Standard's prices at Havre de Grace and Perryville at that time were the same?—A. No, sir; there was about a cent a gallon difference between the Havre de Grace price and the Perryville price.

Q. From what station did the Standard deliver its gasolene or oils?—A. Delivered it from Port Deposit station to Perryville. They had a station in Havre de Grace, but they couldn't get across the river to deliver at Perryville from Havre de Grace.

Q. How far from their station was Perryville?—A. About
13950 six or seven miles.

Q. Did you make any sale in Perryville during that month for less than the Standard price?—A. Not to my knowledge.

Q. Would you know about it if a sale was made there?—A. Yes, sir, because our instructions to Mr. F. M. Barnes, our Havre de Grace agent——

Mr. CRAWFORD. I object to the instructions, as incompetent, and to any further testimony on this point, because it is quite clear that it is not based upon personal knowledge but on hearsay.

Q. Go ahead.—A. Our instructions to F. M. Barnes, our agent, were to always sell at the Standard Oil Company's price—never to cut the price. I make periodical visits there every thirty days, to those two town, and am with him when he makes his sales very frequently, and he does not undersell the Standard Oil Company at any place, and he always sells at the same price that the Standard Oil Company sells at.

Mr. CRAWFORD. I move to strike out the witness' answer as containing matter based upon hearsay.

Mr. MORRISON. You have your objection in. What is the use of putting anything else in.

Q. Is there anything about the Perryville and Havre de Grace situation there that explains a difference in the price in the two towns, either by the Standard or by your company?—A. Yes, sir.

Q. What is it?—A. We have to pay 5 cents a hundred freight to get our gasoline into Perryville from our warehouse at Havre de Grace. That being the case, it costs us more money to de-
13951 liver oil or gasoline in Perryville than it does in Havre de Grace. We were trying to get some of that Perryville trade in order to increase our business, and the inconvenience of going across the river deterred us from doing any business in Perryville to amount to anything, consequently there was no competition in Perryville, and the Standard Oil Company, delivering and supplying Perryville from Port Deposit, charged more money than in Havre de Grace, where we did business.

Q. Then, do I understand you that you met the Havre de Grace price in Perryville?—A. No, sir; we met the Perryville price in Perryville.

Q. And did you sell for less than the Perryville price?—A. No, sir.

Q. After you had made a sale there at the Standard Oil Company's price, did the market change?—A. Yes, sir; right immediately. The next trip over there we found the Standard selling gasoline to the Perryville people at Havre de Grace prices.

Q. Did you afterward continue to sell them at the Havre de Grace price?—A. Yes, sir.

Mr. CRAWFORD. I move to strike out the answer of the witness, on the ground that it is not rebuttal, not responsive to any testimony of the defense, and opening up new matter.

Q. Mr. Sparks says that the Columbia Oil Company made a cut on gasoline to a a grocer by the name of Keyes, at Linden, Maryland; that he had been a customer of the Standard before that, and that the Columbia got his business by making a cut in the price from 9 cents to 8 cents on oil. There is no date given
13952 to this transaction by Mr. Sparks. Do you know anything about the situation there at Linden?—A. I do.

Q. At what price did you sell in Linden, Maryland?—A. We sold at the Washington City market price.

Q. How far is it from Washington?—A. About eight miles or nine.

Q. Is it reached by your tank-wagon service?—A. It is.

Q. Do you know whether that price, the Washington price, was higher or lower than the Standard's price at Linden, Maryland, at the time?—A. It was lower.

Q. So that if you call that a cut—that is, the extending of the Washington price to all places where your tank-wagon delivery reached—that would be a cut, would it?—A. No, sir; that would not be a cut.

Q. Well, the extension of your Washington price to these various towns, if that Washington price was lower than the Standard's price

(you may call it what you please), that would be selling in that particular town lower than the Standard was selling, wouldn't it?—A. It wouldn't be selling lower than the Standard were selling in Washington.

Q. No; but lower than they were selling at that place?—A. Of course it would.

Q. Has the Standard a station anywhere near there?—A. They have one at Rockville, a distance of about seven or eight miles from Linden.

Q. About the same distance as your station is?—A. Approximately the same distance; in the opposite direction.

Q. Mr. Parsells says that the Red "C" cut the price half a cent to a man by the name of Hewitt, at Silver Spring; that the Red "C" sold in barrels, and that the Standard sold from tank
13953 wagon, and that it would figure out, after the barrels were returned, that the sale was made at half a cent below the tank wagon price. What do you say about that?—A. The prices of oil around Silver Spring, Maryland, were most any kind of price. There were three or four different prices in and around the place, as it was a sort of converging point for two of the Standard Oil Company's wagon routes—the Washington route and the Rockville route. And the Dixie Oil Company had a station there, and R. C. Baumann, of Washington, was running an independent oil concern—his wagon came out. And nobody knew hardly what the prices were.

Q. At what price did you make your sales?—A. My price was made by taking the Baltimore market price and adding my carload freight rate to Silver Spring, Maryland.

Q. Were these sales made in carload lots there?—A. Yes, sir.

Q. The barrels, I suppose, were returned to you and a proper credit given?—A. Yes, sir.

Q. Do you know whether selling on that basis—that is, your Baltimore price with the freight added—made your price in Silver Spring higher or lower than the Standard's price at that place?—A. It may have been either higher or lower.

Q. Is that the dividing line, do I understand you, between two different divisions of the Standard Oil Company's business?—A. Yes, sir.

Q. At Silver Spring?—A. Yes, sir; just about Silver Spring, a mile, at Sligo; that is the extent of the Washington tank-wagon service of the Standard Oil Company, as a rule.

Q. Do the prices differ just over the line?—A. Yes, sir.

13954 Q. The Standard's price?—A. Yes, sir; just over the line it is from a cent to two cents per gallon higher than the Washington price.

Q. Is that territory on both sides of the line, that you speak about, reached by tank wagon service, either by one or the other of the Standard's tank wagon stations?—A. Yes, sir.

Q. Mr. Parsells says that the Red "C" made a cut to a man by the name of Butt, at Sligo, Maryland, and also to a man by the name of

Moss, at the same place; that you gave these men the same prices that you gave Hewitt, at Silver Spring, and that the Standard lost the business by reason of that cut. What do you say about that?—A. The same explanation applies to Mr. Butt and to Mr. Moss as to Mr. Hewitt, at Silver Spring. Those two stores at Sligo were included in the Washington City tank wagon service of the Standard Oil Company; consequently it was a much lower price than the prices right outside of that town, which was supplied by the Standard Oil Company's tank wagon from Rockville, Maryland. And that would be construed by the Standard Oil Company as a cut.

Q. Well, how was your price?—A. Our price was the Baltimore market price with the car-load freight rate added.

Q. Then, if I understand you, if a sale is made, for instance, by your company, at the Baltimore price with the freight added, in one of these divisions it might be a cut while in the other division—just across the imaginary line between the two divisions—it might be higher than the Standard's. Is that right?—A. It is.

Mr. CRAWFORD. And you don't know which it was.

13955 WITNESS. No; I know this: It was lower than the Rockville tank wagon price of the Standard Oil Company.

Q. Lower?—A. Yes, sir.

Q. Well, was it lower than the Roslyn tank wagon price?—A. No, sir; this is in reference to the Red "C" Oil Company. You see, we didn't run a tank wagon service there at Silver Spring, we only sold in barrels.

Q. I understand that. But you say it was lower than the Standard's Rockville price?—A. Yes.

Q. Was it lower or higher than their price in the other district which comes up to the line?—A. It couldn't have been lower, no, sir.

Mr. CRAWFORD. I object to that answer and move to strike it out, as including a matter of inference. The witness shows no knowledge.

Q. Mr. Wilmer says that you offered a Mr. Cissel, at Wheaton, Maryland, 10 cents a barrel for hauling oil from Silver Spring to Cissel's own warehouse or to his store. What have you to say about that?—A. I did.

Q. What did you do that for?—A. In order to match the same hauling allowance that Mr. J. C. Knight, the salesman of the Dixie Oil Company, had made to Mr. Cissel on a previous sale that the Dixie Company had made to Mr. Cissel and taken his trade away from me.

Q. Had Cissel been your customer before that?—A. He had.

Q. You lost his trade, did you?—A. I did for the time being.

Q. And after the loss of his trade you made him that proposition, or you allowed him that 10 cents a barrel for hauling?—

13956 A. I did.

Q. And you did that, as I understand, because he informed you that Wilmer had done the same thing, or that somebody had, for the Dixie?—A. He showed me the bill; I saw the bill from the

Dixie Oil Company where the allowance had been credited on the bill for the hauling.

Mr. CRAWFORD. I move to strike out the answer as based upon hearsay and also as giving the contents of a written document not produced or accounted for.

Q. What he said to you and showed to you there, as I understand you, was what induced you to make that proposition to him of 10 cents a barrel. Is that right?

Mr. CRAWFORD. The same objection.

A. Yes, sir.

Mr. CAMPBELL. Is this evidence offered for the purpose of showing the reason——

Mr. MORRISON. It is offered for whatever it is competent for.

Q. Mr. Artie Purse says that the Home Safety was doing business in Seaford, Delaware, and that the Red "C" Oil Company came in there and cut the price in barrels a half a cent under the Standard Oil Company's price at that place. What do you say about that? What was your Seaford price?—A. Our Seaford price was the Baltimore market price with the freight added over the steamboat line that plied from Baltimore to Seaford, Delaware.

Q. Do you know whether that brought the price at Seaford down lower, or whether it was higher than the Standard's?—A. I do not.

13957 Q. Mr. John W. Duling says that the Red "C" Oil Company cut the price at Staunton, Virginia, last fall, three-quarters of a cent on oil, and he also says that at Craigsville, Virginia, last winter, the Red "C" sold to Craig & Doyle, one of the Standard's customers, for 11½ cents, and that the Standard's price at that time on Aladdin oil, f. o. b. Staunton, was 12 cents a gallon, which would make a cut of half a cent a gallon. What have you to say about those two situations—the one at Staunton and the other at Craigsville, Virginia?—A. In the first instance, the price at Staunton was made by taking the Baltimore market price and adding the freight rate of 50 cents per barrel from Baltimore to Staunton, Virginia. This was the same price that we had at Harrisonburg, Virginia, twenty-six miles away—comparative situation—where the Standard Oil Company's tank wagon price was 9½ cents per gallon. I hadn't any business in Staunton; wasn't doing business there; had been froze out previously to that by the Standard Oil Company. The merchants in Staunton had to pay the Standard Oil Company 10½ cents for tank wagon oil.

Mr. CRAWFORD. I object to that as hearsay.

13958 Q. Go on.—A. And the Standard merchants, knowing that the Harrisonburg merchants were getting oil from the Standard Oil people and from us at 9½ cents a gallon——

Mr. CRAWFORD. I object to this testimony as hearsay and utterly incompetent. He can not possibly know what merchants had in their minds.

Q. Go ahead, Mr. Metzel.—A. —— they importuned me in my business there to sell oil in Staunton.

Mr. CRAWFORD. I object to that as immaterial and incompetent.

Mr. MORRISON. Wait till he gets through with his answer.

Mr. CRAWFORD. No; I will not, because then you will say that I should have made my objection promptly.

Mr. MORRISON. No; I will say nothing of the kind if you will wait until the witness finishes his answer.

Q. Go ahead.—A. They secured an agent for me, R. P. Langford, and finally induced me to ship a car of oil into Staunton, and I made the price 11¾ cents per gallon, delivered at Staunton, $1.10 deducted for the empty barrel, making 2¼ cents—making the net price at 9½ cents per gallon, the same as——

Q. Was that your Baltimore price with the freight added?—A. That was the Baltimore price with the freight added to Staunton.

Q. As I understand you, what you did there was to make the Staunton price and the Harrisonburg price the same?—A. Yes, sir; treating the Staunton people just the same as the Harrisonburg people; whereas the Standard were gouging the Harrisonburg people——

Mr. CRAWFORD. I move to strike out the statement about
13959 the Standard gouging the Harrisonburg people as most incompetent and improper.

Mr. MORRISON. Yes; that may go out.

Q. State what the facts were. What was the difference in price between Staunton and Harrisonburg?—A. Our price was the same.

Q. No; the Standard's price.—A. The Standard Oil Company's price was three-quarters of a cent higher in Staunton than in Harrisonburg.

Q. The Standard was delivering from their tank wagons at both of those places, were they not?—A. Yes, sir.

Q. Where did they have stations that served those two places?—A. Right in both the towns.

Q. They had a station in each town. You were delivering in barrels and shipping from Baltimore?—A. Yes.

Q. Was the freight rate the same from Baltimore to Staunton as it was to Harrisonburg?—A. The same freight rate—fifty cents per barrel in each instance.

Q. And you simply made the same price in Harrisonburg that you had made in Staunton?—A. I made the same price in Staunton that I had been making in Harrisonburg.

Q. Yes; either way. While the Standard at one of these places was selling for three-quarters of a cent a gallon higher than it was in the other?—A. Yes, sir.

Mr. CAMPBELL. Did you ever ship to Harrisonburg from Baltimore?

WITNESS. Yes, sir.

Mr. CRAWFORD. What was the freight?

13960 Mr. MORRISON. He said it was 50 cents a barrel.
Mr. CRAWFORD. Fifty cents a barrel?
WITNESS Yes, sir.
Mr. CRAWFORD. Do you know how much a hundred?
Mr. MORRISON. Now, just wait.
WITNESS. 12½ cents.
Mr. MORRISON. Wait a moment till I get through with this witness.

Q. Mr. Duling also says that at Millboro, Virginia, there was a cut made to the Trade Supply Company by the Red "C" Company of ¼ cent below the Standard's price, and an allowance of 16 cents a barrel for freight; in May or June, 1907. What have you got to say about that, Mr. Metzel?—A. I sold the Trade Supply Company at Millboro, Virginia, Aurora oil at 12 cents per gallon f. o. b. Staunton, which Mr. Duling testified was the Standard Oil Company's market price f. o. b. Staunton.

Mr. CRAWFORD. I object to what Mr. Duling testified to. That is not for this witness to answer upon the record, and I move to strike that out.

Q. I understand you, then, that your price there was the same as the Standard's?—A. It was the market price f. o. b. Staunton, the same as the Standard oil—12 cents per gallon.

Mr. CRAWFORD. I object to the statement in regard to the Standard, because this witness has evidently derived that from hearsay.

WITNESS. And at Craigsville, Virginia, about which you asked me a minute ago, which I did not explain——

13961 Q. Oh, yes; I passed over it. Well, explain that Craigsville situation.—A. I sold Craig & Doyle oil from time to time at 12 cents per gallon f. o. b. Staunton, the market price. The next time I came along I found Mr. Duling had sold Craig & Doyle five barrels of Aladdin oil at 11¾ cents f. o. b. Staunton, a cut of a quarter of a cent. I matched his price and sold Craig & Doyle five barrels of Aurora oil at 11¾ cents per gallon. On my next trip there I found that Craig & Doyle were buying oil from a Standard subsidiary concern in Staunton, called the Staunton Safety Oil Company, at 11½ cents per gallon. I did not meet this price, and have never sold Craig & Doyle since, having lost their trade.

Q. Mr. Duling also states that there was a cut at Lexington, Virginia, to J. Gassman & Company, in the fall of 1907, of 1 cent and freight on paraffine oil. Duling says: "Our price f. o. b. Staunton was 16 cents, and the freight rate from Staunton was 16 or 18 cents per hundred"—he does not recall—and that you sold them a barrel of oil at 15 cents, making a cut of 1 cent and freight. What do you say about that?—A. I sold a car load of oil in Lexington, Virginia, at that time, and in that car was one barrel of paraffine oil for J. Gassman & Company, which I sold them at the Baltimore market price, freight rate added. We keep an agency at Lexington, Virginia, and prices there, as I said before, are made by taking the Baltimore market price for our oil and adding the freight to make a delivered price.

Q. You sold only one barrel of paraffine oil, as I understand?—A. At that time; yes, sir.

Mr. CRAWFORD. Do you know whether that was more or less
13962 than the Standard's price?

WITNESS. He wasn't inquiring about the Standard Oil's difference in price at all.

Mr. CRAWFORD. Well, do you know?

Mr. MORRISON. Just wait.

WITNESS. I know what the Standard Oil Company's price ought to have been.

Q. Mr. Eitel testified that the Standard Company had the business of the Chesapeake & Western Railroad Company in 1906 and the early part of 1907, but that it went to the Red "C" Oil Company because the Red "C" made a lower price. What have you to say about that?—A. I had the business of the Chesapeake & Western Railroad Company from 1905 up until the summer of 1906, at fairly remunerative prices. The Standard Oil Company came along and cut the prices a great deal and secured the contract for the ensuing year of 1906 and 1907, and had the business.

Mr. CRAWFORD. I object to the statement about the price-cutting by the Standard. It must be based upon hearsay.

A. (Continuing.) When the contract with this railroad company expired in 1907, the manager, Mr. C. B. Williamson, asked me if I could not sell them oil for the next year. I told him I would. "Well," he says, "all you have got to do is to match the Standard Oil Company's price"——

Mr. CRAWFORD. I object to the conversation with Williamson as hearsay.

A. (Continuing.) He handed me their contract and I simply matched the prices of the Standard Oil Company and secured the contract for the next year, and I have got it yet.

13963 Mr. CRAWFORD. I move to strike out all the witness' testimony in regard to Williamson, as heresay and incompetent.

Q. You saw the contract?—A. Yes, sir.

Mr. CRAWFORD. I object to it further, as calling for the contents of a written instrument.

Q. Did you learn whether or not the price that the Standard had been furnishing them the oil for was higher or lower than your price previously?

Mr. CRAWFORD. I object to that as palpably calling for hearsay.

A. Certainly. I saw the prices there, and they were a wonderful cut from the prices that we had been selling them the oil for previous. That is why he got the contract away from us in that year.

Mr. CRAWFORD. I move to strike the testimony out, as clearly hearsay.

Q. Answer the question, now. And your price that you made to this company at that time was based upon a contract shown to you by the customer, was it not?

Mr. CRAWFORD. I make the same objection, and that it calls for the contents of a written instrument.

A. Yes, sir.

Q. Mr. Eitel says that in March, 1907, the Red "C" shipped oil to Somerset, Virginia, selling it there at 12 cents and giving back $1.15 for the barrel, making a cut of three-quarters of a cent a gallon under the Standard's tank wagon price, and that by this cut the Red "C" secured business which the Standard had previously enjoyed. He names, among the merchants to whom the Red
13964 "C" made this cut at Somerset, C. E. Morris, R. E. Wilhoit, John G. Woolfolk—it appears in the record as Woolford—of Uno; G. D. Thomas, of Wolfrun; N. R. Stephens, of Quinque; and W. B. Gillum, of Barboursville. What have you to say about that?—A. I sold those merchants a carload of oil at 12 cents per gallon, delivered at Somerset, Virginia. The Baltimore market price for Columbia headlight oil was 11 cents per gallon, carload freight 12½ cents per hundred, 50 cents per barrel, equivalent to 1 cent per gallon, which made it 12 cents a gallon delivered at Somerset. The value of the empty barrel was at that time $1.10 or $1.15 f. o. b. Somerset.

Q. How did you make up this carload that you shipped to Somerset? Was it all sold to people living in Somerset?—A. No, sir. It takes two days to drive over the country to see all those people. It is away back, covering parts of three counties of Virginia. I hired a team and drove around over the country for two days, soliciting orders.

Q. In making up this order?—A. In making up this carload of oil; yes, sir.

Q. How did you deliver it?—A. Delivered the carload, consigned to C. E. Morris & Company, Somerset, Virginia.

Q. How did they get it to these different storekeepers?—A. They came with their teams to Somerset and hauled it to their stores—five, ten, some as many as twenty miles a way.

Q. You mean the purchaser did?—A. Yes, sir.

Mr. CRAWFORD. Do you know whether the net price that you made was less than the Standard's or not?

WITNESS. I didn't inquire about that at all. I was just
13965 simply following my instructions from the Red "C" Oil Company, selling at the Baltimore market price, and adding the freight, whatever it happened to be, to the towns which I visited.

Q. Mr. Eitel says that the Red "C" Oil Company sold the Troy Steam Laundry, at Harrisonburg, Virginia, 86-degree gasoline at 22½ cents f. o. b. Harrisonburg, which was a cut of 2¼ cents a gallon, after taking into consideration the matter of freight, and that the Red "C" got the business by reason of that cut. What do you say about that transaction?—A. I sold them a barrel of 86-degree gasoline at 22½ cents per gallon, delivered at Harrisonburg, Virginia. The Baltimore market price was 21 cents per gallon; the carload freight rate was 1 cent per gallon. The expenses of delivering it in Har-

risonburg was a half a cent per gallon, making it 22½ cents delivered. As we make no profit on 86-degree gasoline—we sell it at the same price which it costs us to make it, or at which we buy it—why, we have to add any expenses attending the delivery of that article when we sell it.

Mr. CRAWFORD. Do you know whether that was less than the Standard's price or not?

WITNESS. I do not. I did not inquire about that. I know so as to say what the Standard's price ought to be.

Mr. CRAWFORD. I object to that, and move to strike it out as incompetent.

Q. Mr. Eitel says that the Red "C" Oil Company made a cut to J. E. Beard & Company, of Broadway, Virginia; that previous to this the Standard Oil Company had his trade, and that thereafter he refused to purchase from the Standard, because the Red
13966 "C" had made him a better price. He does not state, however, what the Standard's price was nor what the Red "C's" price was to this customer. What do you have to say about that?—A. I called on J. E. Beard & Company, asked them to buy some oil from me. He says, "What is your price?" I told him. He says, "You are too high." He produced a bill that he had bought from the Standard Oil Company, at Winchester, Virginia, and says, "If you want to sell me 25 barrels of oil at those prices, take my order." I immediately did so, and sold him 25 barrels of oil at the same price at which he had bought a similar quantity of oil for from the Standard Oil Company, f. o. b. Winchester, Virginia.

Mr. CRAWFORD. I move to strike out the testimony as to what he had bought for from the Standard Oil Company, as hearsay.

Q. Had you been selling Beard & Company before that?—A. Yes, sir.

Q. Had you sold them all that they bought, do you know, or were they also buying from other companies at the same time that they were buying from you?—A. He divided his trade.

Q. And since that has he divided the trade?—A. He has. I am selling him probably three-quarters of his oil. The reason that the complaint made was that I cut prices there at Broadway, Virginia, was because——

Mr. CAMPBELL. I don't think you need give the reason.

Mr. CRAWFORD. I object to any reason.

Q. If there is any further explanation in regard to that Broadway situation that you wish to make, go ahead and make it.—A. To clear Mr. Eitel and keep from putting Mr. Eitel in a false position.

Mr. CRAWFORD. I object to that as incompetent, and move
13967 to strike it out as hearsay, and inference, and also incompetent.

Q. If you have anything to say that explains that price condition there, I want you to say it.—A. Mr. Eitel, in his efforts to sell Mr. Beard, claimed that if he was allowed to use the Winchester price of

the Standard Oil Company instead of the Harrisonburg price of the Standard Oil Company, he could have sold Mr. Beard oil.

Mr. CRAWFORD. I object to that as hearsay.

Q. What is the difference between the Harrisonburg price and the price in this other town that you have just mentioned?—A. As much as a cent and a half per gallon—Winchester being that much lower than Harrisonburg.

Q. Are these towns near together, and do they take the same freight rate?—A. The distance apart is about 80 miles.

Q. Do you know whether they take the same freight rate or not?—A. The freight rate to Winchester is about 10 cents per barrel less than to Harrisonburg—a quarter of a cent per gallon.

Q. Does the Standard have tank wagon stations in both of those places?—A. Yes, sir.

Q. Now, this same witness also says that in August, 1906, you did the same thing with the Adamant Porcelain Company. What do you have to say about this Adamant Porcelain Company?—A. I sold them the same way in which I sold J. E. Beard & Company. They had been buying from the Standard Oil Company at Winchester, Virginia, and I simply matched the Winchester price of the Standard Oil Company.

Q. How far is Winchester, Virginia, from Broadway, Virginia?—A. It is about 60 or 70 miles.

13968 Q. Mr. Eitel states that in October, 1907, the Red "C" sold gasoline in barrels at 16 cents, delivered, to A. W. McKim & Son, of Luray, Virginia; that the Standard price was 14½ cents, f. o. b. Baltimore, and the difference in the freight rate made about 1½ cents cut in the price to McKim, and that the Standard had previously supplied this party, and the Red "C" Oil Company got the business because of this cut. What do you say about that?—A. I had always been selling McKim & Son some of their oils and gasolines, and we shipped it as a rule to Luray in carload lots, and the carload freight rate, of course, is less than the local freight rate, and my price was made by taking the Baltimore market price and adding the freight to make a delivered price at Luray.

Q. Well, did you get all of the business of this concern in 1907?—A. No, sir.

Q. You say that you had part of it before?—A. Yes, sir.

Q. Have you had part of it since?—A. Part of it since.

Q. Have you had any more since that than you had before—that is, any greater proportion of his entire trade?—A. About the same proportion.

Mr. CRAWFORD. What was your price at Luray?

WITNESS. It was the Baltimore market price with the freight added.

Mr. CRAWFORD. Yes, but what was it; do you know?

WITNESS. I don't remember what it was—the figures.

Q. Mr. Frank L. Hewitt testified that he was working for the Farmers' Supply Company, which was the agent of the Dixie Oil

Works at Silver Spring, Maryland, and that in 1904 and up
13969 until October, 1905, his company got a commission for selling oil to the trade in and about Silver Spring and through Montgomery County. He says that the Dixie's and the Standard's prices were about the same, but the Red "C's" price was below that of the Standard; that in 1903 he was in the grocery business in Silver Spring, buying exclusively from the Red "C," and that he found out that a friend of his, Mr. Stonestreet, of Norbeck, was buying oil for 10½ cents from the Standard Oil Company, while he was then getting it at 9½ cents; that the Standard was delivering at 10½ cents from the tank wagon at this time; that he (Hewitt) also got $1.07 back for the barrels, which would make it amount to a cut of a little more than 2 cents a gallon and would bring his price down to 7½ cents a gallon. What do you say about that situation, Mr. Metzel?—A. At that time the Farmers' Supply Company of Silver Spring, Maryland, of whom Frank L. Hewitt was a member, worked for them, was our consignee for a carload of oil, as well as the Dixie Oil Company's consignee. They stored oil for both concerns. Mr. Hewitt bought his oil from me at whatever the price was at that time. The market price at Baltimore, with the freight added.

Mr. CRAWFORD. What time are you talking about?

WITNESS. The time that Mr. Hewitt testified to.

Mr. CRAWFORD. Well, what was the time—because he mentions two times?

WITNESS. He mentions a period——

Mr. CRAWFORD. Well, what was it?

Q. 1904 to 1905?—A. 1904 to 1905.

Mr. CRAWFORD. You read about 1903.

13970 Mr. MORRISON. Well, that is another occasion.

Mr. CRAWFORD. But you included it in your question.

Q. Go ahead and answer my question.

Mr. CRAWFORD. I want to know which one the witness is talking about, that is all.

A. It covers a period of three years, about, at the time which the Dixie Oil Company was operating around Montgomery County, Maryland.

Q. Go ahead.—A. And the competition was fierce. I was losing customer after customer by the Dixie Oil Company cutting my prices, selling everywhere at a less price than we did.

Mr. CRAWFORD. I move to strike that out as being based upon hearsay.

Q. Go ahead.—A. They never sold oil for as much money as we did.

Mr. CRAWFORD. I repeat the motion, on the same ground.

A. (Continuing.) They always cut the price. They couldn't sell their oil unless they did cut the price.

Mr. CRAWFORD. I object to this as grossly incompetent and as hearsay, and move to strike it out.

A. (Continuing.) I was selling to Wash. Hicks at 11¼ cents per gallon. The Dixie Oil salesman, Mr. Wilmer, sold him at a cut of ¾ cent per gallon, as testified by Mr. Hicks here yesterday.

Mr. CRAWFORD. By whom?

WITNESS. Mr. Washington Hicks, my customer.

Q. Get back to this question.

Mr. CRAWFORD. I object to any testimony about Mr. Hicks.

13971 WITNESS. I am explaining, as you requested me.

Mr. CRAWFORD. I move to strike it out—his quoting another witness in the case—as plainly hearsay and incompetent.

Q. Go ahead.—A. A. W. Stonestreet, to whom Mr. Hewitt refers, was buying oil from me occasionally; as was Harris Bros., at Oakdale; as was Carson Ward, at Gaithersburg, Maryland; Perry Waters, at Germantown, Maryland; and a great many other people in that country. Wherever I had a customer, the Dixie Oil Company made a dead set for him.

Mr. CRAWFORD. I object to that and move to strike it out as hearsay and as not proper rebuttal.

Q. At what price were you selling your oil during this entire period?—A. The Baltimore market price with the freight rate added to Silver Spring, Maryland.

Q. Was there any difference in the Standard's price in that same locality, depending upon what station it was delivered from?—A. Yes, sir; a wide variation in prices.

Q. What was the difference?—A. As much as 2 to 3 cents per gallon.

Mr. CRAWFORD. I move to strike that out as hearsay.

Q. Between what places?—A. Between the Washington tank-wagon price of the Standard Oil Company and the Rockville tank-wagon price of the Standard Oil Company.

Q. Were they both delivered from the same station?—A. My oil?

Q. Were the Rockville merchants supplied from the same station that the Washington merchants were supplied from?—A. No, sir.

Q. What is the difference?—A. Rockville is 16 miles from Washington. The Standard Oil Company have a station in Rock-

13972 ville, to supply the Rockville and vicinity trade.

Q. And their other station is nearer Washington, is it not?—A. Yes, sir; Silver Spring is closer to Washington than it is to Rockville; consequently Washington's tank wagon of the Standard Oil Company supplies Silver Spring.

Q. From what station was Stonestreet's oil delivered—A. Rockville.

Q. And that is the station at which you said, I think, that the price was 2 or 3 cents higher than the Washington price?—A. It was.

Q. In what district was Mr. Hewitt's store?—A. The Washington district.

Q. So that he got his oil cheaper than Stonestreet got it?—A. Yes, sir.

Q. As I understand you, you gave Hewitt the Washington tank-wagon price of the Standard Oil Company; is that right?—A. It was approximately that; it was our Baltimore price with the freight added. That is the way we made a delivered price at Silver Spring. But the Silver Spring price at times was a little lower than that, in order to meet the Standard Oil Company's competition at Silver Spring and Washington.

Q. How far is Silver Spring from Washington?—A. Seven miles.

Q. Can this be reached by the tank-wagon deliveries from the Washington station or the Rockville station of the Standard Oil Company?—A. It can be reached by either station, but it is supplied from their Washington station.

Q. Mr. Hewitt also testified that in 1904, when he was with the Dixie, he solicited and sold the trade of the Standard Oil
13973 Company and did not make any special drive for the Red C's trade. He was asked to give the names of some companies, customers of the Standard, whose trade he obtained, and he named A. B. Stonestreet, at Norbeck; Harris Bros., at Oakdale; and Carson Ward, at Gaithersburg, whom he said were Standard customers. Were those persons Standard customers at that time?—A. They bought part of their oil from me—from the Red "C" Oil Company, and part from the Standard Oil Company.

Q. Is that true as to all of them whose names I gave you?—A. It is. Harris Bros. bought from me until they failed and went out of business, and are owing us for the oil yet.

Q. Mr. Ernest L. Lillard testified that during the latter part of 1904 or the early part of 1905 the Red "C" Company sold to H. C. Hickerson of Kensington, Maryland; G. O. B. Cissel at Wheaton, Maryland; Carson Ward, at Gaithersburg, Maryland; and Perry Waters at Germantown, Maryland, at a cut price of ½ cent under the Standard's tank-wgaon price. He says that the price to H. C. Hickerson at Kensington was 10½ cents in barrels f. o. b. Silver Spring, and that the Red "C" paid $1.25 for the return of the empty packages f. o. b. Silver Spring, and that Mr. Hickerson hauled these empty barrels back to Silver Spring, but did not haul the full packages. He figures out that this makes a cut of a little over ½ cent, and he says that their tank-wagon price at Kensington at that time was 9 cents. What do you say about that situation there, Mr. Metzel?—A. I never sold H. C. Hickerson at Kensington any oil at 10½ cents per gallon. I never sold him any oil for less than 13 cents per gallon. He paid me 13, 13½, and 14 cents for all the oil
13974 that he ever bought from the Red "C" Oil Company.

Q. Well, how about G. O. B. Cissel, of Wheaton?—A. Mr. G. O. B. Cissel, of Wheaton, bought our Sunbeam brand of oil, which was a cheaper grade of oil than what H. C. Hickerson bought. He bought the White "C" oil. He never bought any other kind from me than the White "C" oil.

Q. What price did you make Cissel?—A. Baltimore market price with the freight added to Silver Spring, and he did his own hauling

from Silver Spring to Wheaton, except in one instance when I credited to him 10 cents per barrel for hauling. That was the only instance that he ever got hauling credited from the Red "C" Oil Company.

Q. How far did he have to haul it?—A. 6 or 7 miles. About 5 miles, I think.

Mr. CRAWFORD. 3 miles.

WITNESS. From 3 to 5 miles, from Wheaton to Silver Spring.

Q. What is that?—A. It is somewhere around 4 or 5 miles from Wheaton to Silver Spring, by guessing at the distance.

Q. Cissel bought it f. o. b. Silver Spring, didn't he?—A. Yes. So did Hickerson. And so did every one of those people that he mentions that I saw—f. o. b. Silver Spring.

Q. And in all cases, as I understand you, except one, they had to get the oil over from Silver Spring——A. At their own expense.

Q. ——themselves, at their own expense?—A. Of freight and haul.

Q. Did you explain about Carson Ward, at Gaithersburg, Maryland?—A. The same explanation as of G. O. B. Cissel.

Q. What kind of oil did you sell him?—A. Columbia
13975 Headlight oil. Perry Waters, at Germantown, bought Columbia Headlight oil and Sunbeam Safety Oil and Red "C" oil—all different grades of oil.

Q. And at different prices?—A. And at different prices.

Q. At what price did you sell the oil?—A. Sold it to them at the Baltimore market price with the freight to Silver Spring added, and they paid their own freight from Silver Spring to their respective stations.

Q. Mr. Lillard also testified that the Columbia made cuts at Rockville and vicinity in 1905 or 1906—possibly in the spring of 1906; that the Red "C's" agent sold them oil there at a cent a gallon under the market price. Do you know anything about that?—A. Yes, sir; I do.

Q. What is the fact about it?—A. It was the Columbia Oil Company's wagon, starting from Washington and going as far in a day's drive as it could, selling oil at the Washington market price.

Q. Well, did it get to this town?—A. It did, on one occasion.

Q. To Rockville, Maryland?—A. To Rockville, Maryland.

Q. And it sold there at the Washington price?—A. The Washington market price.

Q. Was that lower or higher than the Standard were selling at Rockville?—A. It was lower than the Standard Company's price at Rockville.

Q. What was the Standard's price there?—A. It was either a cent or a cent and a half above the Washington market price.

Q. From what station of the Standard Oil Company was this town supplied?—A. Rockville.

13976 Q. From the Rockville?—A. The same place.

Q. They have a station right there?—A. Yes, sir.

Q. And yet they were charging more for their oil there than they were at Washington?—A. Yes, sir.

Q. Mr. Lillard says that the Columbia sold oil to Wilson Bros. at Bethesda and took the trade away from them, and that he discontinued sending his wagon there because of a cut made by the Columbia of a cent a gallon; that afterwards the Columbia visited Linden and Forest Glen, and at those places it cut the price a cent a gallon and took the trade away from the Standard. What have you to say about that?—A. Well, that is the same route of the Columbia Oil Company's wagon as included Rockville, and it sold at the Washington tank-wagon price, the market price, at all those points that he visited.

Q. Just name the points that are on that same road, or the same——A. Of the Columbia Oil wagon route?

Q. Covered by the same trip, going out from Washington.—A. Starting from Washington, the first stop is Brightwood—various stores in Brightwood; the next stop is Silver Spring, Maryland; Sligo, Maryland; Four Corners, Maryland; Burnt Mills, Maryland; Linden, Maryland; Forest Glen, Maryland. Then he cuts across country to Chevy Chase, Maryland; Bethesda, Maryland, and back to West Washington.

Mr. CAMPBELL. And Wheaton?

WITNESS. Don't go to Wheaton.

Q. Are those stations within the territory of the Rockville station or division of the Standard Oil Company, or the Washington?—A. The first three mentioned places are in the Washington district of the Standard Oil Company's tank wagon.

13977

Mr. CRAWFORD. Just name them, will you?

WITNESS. Brightwood, Silver Spring, and Sligo.

Q. And those towns, as I understand you, take the Washington price?—A. They are supplied by the Washington tank wagon of the Standard Oil Company.

Q. The other towns on that same road, further out, are in the territory supplied from Rockville?—A. Part of them; and part of them are supplied by the Standard Oil Company's station at Laurel, Maryland.

Q. Do those places take a different price than those first three that you mentioned?—A. Yes, sir; by the Standard Oil Company.

Q. I mean by the Standard?—A. Yes, sir.

Q. Now, your plan is to send your wagon out that road—it is up towards Baltimore from Washington, isn't it?—A. No, sir; it is north of Washington. Baltimore is northeast of Washington.

Q. Never mind that. Your plan of doing business is to send your tank wagon out from Washington and go as far up there as you can, and to sell wherever you go with your tank wagon, at the Washington price; is that right?—A. That is the way we settled down to at first. When we started outside of Washington we observed Standard Oil Company's outside prices on our first trip.

Q. When did you change that?—A. The next trip of our wagon around to those outside towns, we found (myself and driver)
13978 that the Standard Oil Company had dropped their prices outside of the District line to Washington price, and of course we immediately sold it at the Washington price, and it has been that ever since.

Mr. CRAWFORD. I move to strike out what the driver had found out about the Standard Oil Company's prices, as obviously hearsay.

WITNESS. I mentioned that I was with the driver on that route.

Mr. CRAWFORD. That doesn't make any difference. You found this out from what you heard from other people.

WITNESS. I found it out from what I saw on the tank-wagon tickets.

Mr. CRAWFORD. I object to anything you saw on the tank-wagon tickets as giving the contents of written documents not produced.

Mr. MORRISON. Would you like to have all your testimony of that kind stricken out?

Mr. CRAWFORD. We are perfectly willing to have it all stricken out when yours is stricken out.

Q. You say you found that the Standard had dropped its price to these towns to the Washington price. When was that?

Mr. CRAWFORD. I object to the question as hearsay.

A. That was on the second trip.

Q. Well, when? I mean what year?—A. 1905.

Q. Have the Standard ever since maintained the same price along this whole road up there and to all these towns that you just mentioned?

Mr. CRAWFORD. I object to the question as calling for hear-
13979 say.—A. They have.

Q. Are they all in the same division? Are they all supplied from the same tank-wagon station of the Standard?—A. All these towns that I mentioned?

Q. Yes.—A. No, sir; some of them are supplied from Rockville, some from Laurel, and some from Washington.

Q. That is exactly what I am trying to get at. But o[illegible]hey all have the same price, regardless of the question as to whether all served from the same station?

Mr. CRAWFORD. I object to the question.

A. Yes, sir; they do.

Mr. CRAWFORD. One moment. Wait till I get my objection down. Now, you have been instructed by the court to wait. You are too swift. I object to the question as calling for hearsay testimony and for matter which is not rebuttal. It is opening up new matter.

(A recess was here taken until 2 o'clock p. m.)

13980 Q. I believe I asked you about Wilson Brothers, of Bethesda, did I not?—A. Yes, sir.

Q. And you explained that situation. You represent the Columbia Oil Company, do you, as well as the Red "C" Oil Company, on the road?—A. I do.

Q. How long have you represented that company?—A. Since it started in business.

Q. When was that?—A. It has been about four years ago.

Q. Are you on the road most of the time, visiting the trade?—A. I am.

Q. How many salesmen have the Red "C" and the Columbia all of the time?—A. The Red "C" Oil Company usually employs about four regular salesmen.

Q. And the Columbia?—A. The Columbia hasn't any salesman but myself, excepting that the local manager in Washington sometimes goes out.

Q. Each of you salesmen has a separate territory, I assume?—A. Yes.

Q. That is, you don't go into the territory of any other salesman of the Red "C" or Columbia, and no other salesman of the Red "C" or Columbia works in your territory; is that right?—A. Occasionally; yes, sir.

Q. Occasionally you do get into other territory?—A. Yes, sir. I sometimes go over all of the territory.

Q. Have you had any complaints from your trade about the overgauging of barrels anywhere, in any of the territory that you have traveled?—A. I have not.

13981 Cross-examination by Mr. CRAWFORD:

Q. What is the territory in which you sell in your capacity as a Columbia salesman?—A. All of the territory that is reached by the tank wagons of the Columbia Oil Company.

Q. Do you also sell for the Red "C" in the same territory?—A. I do.

Q. To the very same customers?—A. I do.

Q. Do you mean that you sell the same man oil from the Columbia and from the Red "C"?—A. I do.

Q. You sell for the Columbia by tank wagon, do you?—A. I do.

Q. And for the Red "C" by barrel?—A. Yes, sir.

Q. The Columbia obtains its oil from the Red "C," does it not?—A. I don't know where it gets its oil. I haven't anything to do with that part of the business.

Q. What is the territory of the tank wagon business of the Columbia?—A. Radiating from Roslyn, Virginia, as far as a pair of horses can go in a day and back again to the stable.

Q. Is that all?—A. Yes, sir.

Q. Doesn't it sell in Washington City?—A. Yes, sir.

Q. Now, then, why do you say that Roslyn is all? I asked you what territory the tank wagon service of the Columbia covered. I

want to know all the places where they maintain a tank wagon service.—A. Do you want the names of the places?

Q. I want the names of the places, yes, or some other description.

Mr. MORRISON. He said that they sold as far as a team of horses could go in a day from Roslyn, Virginia. That is right
13982 near Washington.

WITNESS. Yes. Roslyn is on the Potomac River, adjacent to Washington.

Q. Perhaps I misunderstood you, Mr. Metzel. Then, does it include the city of Washington?—A. It does.

Q. And the suburbs of Washington?—A. It does.

Q. Any other large city? Alexandria?—A. Alexandria, Virginia.

Q. Any other large place beside those?—A. Only the smaller towns.

Q. The smaller towns in regard to which you have testified already—suburbs of Washington?—A. Yes, sir.

Q. Now, in that territory the Red "C" has no separate tank-wagon service, has it?—A. The Red "C" hasn't any tank-wagon service in that section.

Q. The Columbia takes the place of the Red "C" for the tank-wagon service there, does it?—A. No, sir; the Red "C" Oil Company does not solicit business in Washington City.

Q. Well, the Columbia is substantially the local representative of the Red "C" in Washington, isn't it?—A. No, sir; they have no connection with each other; they are separate concerns.

Q. They have the same offices, haven't they?—A. Only in one instance. Mr. Fehsenfeld is president of each company; that is all. I sell for each company. The other members of the different concerns are separate and different people.

Q. What brands of oil does the Columbia sell?—A. It hasn't any brands.

Q. Well, what grades of oil does it sell?—A. It sells 150
13983 test oil—from tank wagons only.

Q. Water White oil—what is commonly called Water White oil?—A. It may be Water White and it may be Prime White.

Q. It has no special name?—A. No, sir; just called tank-wagon oil—of sufficient test to comply with the law.

Q. Do you remember the names of any of the merchants in New Windsor who bought oil?—A. I do.

Q. Suppose you give them to me.—A. Bought oil from me?

Q. From you; yes—first.—A. George C. Anders, L. H. Dielman, Barnes & Snader, J. H. Roop & Company, Lambert & Erhard. That is all that were doing business in the town.

Q. Now, about Mr. Waters, regarding whom you testified you said you lost one customer. Who was the one you lost?—A. J. H. Roop & Company.

Q. And do you mean to say that you continued to sell all the others?—A. We did.

Q. Without any interval at all?—A. I lost George C. Anders, temporarily, while he was using one lot of oil that he purchased from the Dixie Oil Company.

Q. Didn't you lose some of the others temporarily?—A. No, sir.

Q. Are you sure of it?—A. I am sure of it. I secured their orders regularly on my trips right along, without any miss.

(An adjournment was then taken until Monday, January 11, 1909, at 10.30 o'clock a. m.)

13984 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Monday, January 11, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon Franklin Ferris, at the above time and place.

Present: On behalf of the petitioner, Mr. F. B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, Mr. W. Cleveland Runyon.

CHARLES K. SMITH, called on behalf of the petitioner, in rebuttal, having affirmed, testified as follows:

Direct examination by Mr. MORRISON:

Q. What is your name?—A. Charles K. Smith.

Q. What is your business, Mr. Smith?—A. Oil refining and dealing in other oils outside of the petroleum business.

Q. With what company are you connected?—A. Charles K. Smith & Company.

Q. Are you the owner of that company?—A. I am owner of the whole establishment.

Q. How long have you been in the oil business?—A. 44 years.

Q. And in Philadelphia during the entire time?—A. In Philadelphia.

The EXAMINER. Mr. Smith, let me caution you one moment. Counsel on the other side sometimes desire to object to a question
13985 before the answer is given, so do not be quite so prompt with it, but wait to see what they have to say.

WITNESS. All right, sir.

Q. Is the Atlantic Refining Company doing business in Philadelphia?—A. Yes, sir.

Q. How long has it been?—A. Oh, many years before it went into the Standard Company—into the trust. I should judge at least 37 or 38 years. William G. Warden was the originator.

Q. At first, I assume, they all delivered in barrels, the same as you did?—A. Yes, sir; we all delivered in barrels.

Q. When did they change to the tank-wagon delivery, as near as you can tell? I don't care for the exact time.—A. I think about 1900 to 1902.

Q. And at that time you were delivering in barrels, were you?—A. Yes, sir.

Q. How long after they commenced delivering from the tank wagons was it before you commenced to deliver from tank wagons?—A. I started in 1902. I presume they were delivering in 1900, at least, for I didn't start until 1902, and then it was with one wagon.

Q. You started out one wagon; and how did you deliver?—A. The first wagon that went on the street took the oil in a truck, in 10-gallon cans, delivered to the stores.

Q. About when do you say that wagon was put on?—A. About the middle of the year 1902.

Q. At what price did this wagon commence selling to the trade?—A. Selling at the regular prices that the Atlantic Refining
13986 Company was selling at, and the other dealers—independents, such as Crew-Levick and a number of other small wagon people in Philadelphia—were doing.

Q. Did you increase your equipment after that?—A. Yes, sir.

Q. Your tank-wagon equipment?—A. I then, instead of sending it out in 10-gallon cans on a truck, had a tank wagon built, to start with, and then I bought one that had come from New York, that had been used over here, with the name "Mephisto" on it. That was the second one that I had, that I ran in Philadelphia—two wagons.

Q. Was that the second or third? First you started out delivering in 10-gallon cans?—A. Yes; that was the third, considering the one in cans, the truck.

Q. Then you built one?—A. I had a wagon built; yes.

Q. And the next one that you had was this wagon with the name "Mephisto" on it?—A. Yes, sir.

Q. Mr. Frye testified that you started out a wagon under the name of "Mephisto." Now, was there anything else about that name other than the fact that that was on the wagon when you got it?—A. No, sir.

Q. Did you sell oil from that wagon under the name of "Mephisto?"—A. No, sir. Charles K. Smith & Company.

Mr. CAMPBELL. I don't think Mr. Frye testified that he did, did he, Mr. Morrison?

Mr. MORRISON. Well, he left that inference on that.

Mr. CAMPBELL. That was not the intention.

Mr. CRAWFORD. "A guilty conscience needs no accuser," Mr. Morrison.

13987 Mr. MORRISON. Thank you, Mr. Crawford. I never heard that before.

WITNESS. Gentlemen, I might explain, possibly—I don't know as it is necessary—the reason Mr. Frye spoke of the "Mephisto" being on the first wagon was because that was the first one in the lower end of the city. My original wagon, the large wagon, was in Germantown and Chestnut Hill, which was outside of his territory, and the "Mephisto" was put down in the central part of the city. That is the reason he came across that one first.

Q. What next occurred in the trade there shortly after you put on your tank-wagon service in Philadelphia?—A. We ran along with our wagons and in competition——

Q. At what price?—A. At the regular prices that the trade was selling at, that is, the independents and the Atlantic Refining Company. Our plea was this——

Q. Well, I don't care about that.—A. Well, all right.

Q. Did any change come over the situation there in Philadelphia after you put on the tank-wagon service?—A. The change; no. It came later on, by their putting on extra wagons without any name on, and called them special wagons.

Q. Who put them on?—A. The Atlantic Refining Company—to go to the trade that we were supplying—the independents were supplying with oil.

Q. Well, what did they do?—A. They made the prices a quarter of a cent or half a cent, or whatever they could sell at, to get our customers; they made them that much less, so as to take our trade away.

13988 Q. How many wagons of that character did they have?—A. I am told by my son that they had four or five.

Mr. CRAWFORD. I object to that. That is too palpably hearsay.

Q. Well, what do you know about it?—A. I know that they had one that I saw myself, to start with, and that was a man that had formerly worked for me that left me in 1903, and he went with them on one of these special wagons; they called them "fake" wagons.

Mr. CRAWFORD. Well, Mr. Smith, you were not present so as to know what the prices were, were you?

Mr. MORRISON. We will come to that, Mr. Crawford. Let me examine this witness.

WITNESS. Know what the prices were?

Q. Just wait a moment. Just answer my questions here.—A. All right.

Q. Who was this man that left you?—A. A man by the name of George Hill.

Q. How long had he been with you?—A. He had been with me about four months.

Q. When did he leave you?—A. He started June 30th and left me on October 20th.

Q. How long after he left you was it before he took one of these wagons?—A. It wasn't very long; I couldn't tell you just the time.

Q. When did these special wagons, or "fake" wagons, as you call them, commence cutting the price, with reference to the time that this man left your service and took this wagon and

13989 went onto the street?—A. He left me October 20, 1903, and my impression is he went on within a short time—the latter part of that year, 1903.

Q. When did the price-cutting commence with reference to his taking this wagon?—A. Well, when he went on the street. As soon as he went on the street he knew the customers of the route over which he had been going himself.

Mr. CRAWFORD. I object to what this man knew. That is not competent.

Mr. MORRISON. Well, we think it is competent.

Q. And to what customers did he go when he took this special wagon?—A. They were designated to go to my customers and those of the independents.

Mr. Crawford. I object to this statement about being designated. That is palpably hearsay; what has been told him by somebody else.

Witness. Well, that is where they went entirely.

Mr. Crawford. I move to strike out the witness's answer on the ground that it is clearly based upon hearsay.

Q. Up until that time, as I understand you, you were selling at the regular price, the same as the other companies?—A. Yes, sir.

Q. Was any cut made in your price by this man?—A. Yes, sir.

Q. And how long did that continue?—A. It continued as long as the wagons were on the street.

Q. Well, about how long was that?—A. I judge about a
13990 year and a half. Yes, 1904, and away through 1905; a good part of 1905.

Q. At that time at what price was the Atlantic Refining Company selling to its customers?—A. They were offering to my customers at a half a cent a gallon less than the price that they were selling for to their regular trade out of the regular wagons.

Q. You mean these special wagons were?—A. The special wagons.

Q. Did the Atlantic Refining Company make the same cut price as these special wagons?—A. Not as I understand it, they didn't; no.

Q. You understood that they maintained their regular price?—A. Their regular price to their regular customers.

Q. How much of your trade did these "fake" wagons visit?—A. They visited a number of customers. All of the route that Mr. Hill had, he visited all of them, and then took in as many more as he could during each day.

Q. Was he the only one that was running a "fake" wagon?

Mr. Crawford. I object.

A. No, sir; there was more——

Mr. Crawford. Wait a moment. I object to the question in so far as it uses the words "fake wagons."

Witness. "Special wagon," I would call it.

Mr. Crawford. Wait a moment—or "special wagon,'" because there is no proof thus far that any wagon was entitled to such designation, and especially no proof that they were connected with any one of the defendants.

Mr. Morrison. Read the last question.

13991 (Question read by the reporter.)

A. No, sir. My son had charge of that business, and he said there was five of them.

Mr. Crawford. I object to what the son said as hearsay and incompetent.

Witness. He reported to me.

Q. Tell me just what you do know about it. First, I will ask you whether you were managing the business?—A. Yes, sir.

Mr. CRAWFORD. I move to strike out the witness's former answer on the ground that it is all based upon hearsay.

Q. Did you receive any reports from your drivers or from the men that came in from the streets?—A. Yes, sir.

Q. How frequently, or to what extent, did they report to you?—A. Every day.

Q. Did you keep in touch with the trade and with the prices that the different companies were making in Philadelphia?—A. As close as it was possible for me to do; yes, sir.

Q. Was that a part of your business?—A. Yes, sir.

Q. Did you visit any of the trade yourself, personally?—A. I visited some few of the large one.

Q. And you had your men on the streets all the while?—A. Yes, sir.

Q. What you know, then, about prices, as I understand you, is based upon the reports of your men that were delivering oil and upon your own personal investigation. Am I right about that?

Mr. CRAWFORD. I object to the question on the ground that it calls for an answer basel upon hearsay information from
13992 the counsel's own question.

A. Yes, sir. And my son, who had charge of the outside business, reported to me.

Q. Did he report to you?—A. He reported to me also.

Mr. CAMPBELL. Did these reports that you speak of come to you directly, or to your son?

WITNESS. Part of them came to me, and I answered some of the larger ones by calling on them myself; and part of them, most of them, to my son.

Mr. CRAWFORD. I object again to all the evidence that the witness has given, and to any further questions along this line, on the ground that it appears that the opinion of the witness is not even based upon statements made to him by anyone in the trade, but came to him secondhand, through his son; and I move to strike out all testimony given by him on this point, on that ground.

Q. Your son was out among the trade, was he not?—A. Yes, sir.

Q. It was his business to go among the trade and ascertain the prices?—A. Yes, sir.

Q. It was his business, then, to report to you the conditions?—A. Yes, sir.

Q. And did you receive such reports from him?—A. Yes, sir.

Q. As well as from your drivers?—A. Yes, sir.

Q. Did you act upon those reports and upon the knowledge that you had on the subject of price-cutting by these "fake" wagons?—A. Yes, sir.

Q. What did you do?—A. I had to meet the prices, and then I had to retailiate by going to their trade and offering at
13993 the same price.

Mr. CRAWFORD. I move to strike out what the witness had to do.

Q. Did you direct your men?—A. I did.

Q. What did you direct your men to do, and what did they do?—A. I directed them to meet the prices.

Q. That is, to your customers?—A. To my customers; yes, sir.

Q. Did you give them any directions as to what they should do with the customers of the Atlantic Refining Company?—A. I did.

Q. What did you do in that respect?—A. I told them wherever they could get the small slip with the cut price on that it was sold to my customers at, to take it to the Atlantic Company's customers from the regular wagons and show it to them, so as to bring their price down accordingly to the regular trade.

Q. Did you or did you not direct your men to make the same price to the Atlantic Refining Company's customers as these fake wagons had made to your customers?—A. I had to.

Q. You did that, did you?—A. Yes, sir.

Q. So Mr. Frye is correct, then, in his statement that you did make cuts to the customers of the Atlantic Refining Company?—A. To meet the prices of their wagons; yes, sir.

Q. Did you ever cut below the price that these special wagons were making to your customers during the time that this fight was going on?—A. Not during this fight at all. Originally, when they started in business, there may have been cases where there were some cuts made under certain circumstances, but I couldn't recall any of them now; but not at this time when these wagons were running during 1904.

Q. I am talking about the time covered by Mr. Frye?—A. No; we merely followed their prices.

13994 Q. Did you get below them at any time?—A. Not after that; not under no circumstances; no, sir.

Q. Did you make any cuts to the Atlantic Refining Company's customers during this period that Mr. Frye testifies about, except cuts had been made to your customers?—A. That was all; to meet their prices.

Q. Mr. Frye says that you took about 600 customers away from him in that way. What is the fact about that?—A. I don't know how he computes that. I would have been very glad to have gotten them, but I can't see how he makes his calculation.

Q. Were there that many?—A. I don't believe there was anything like that.

Q. He says that you sold at half a cent less than the Atlantic Refining Company's price. What is the fact about that?

Mr. CRAWFORD. When is this?

Mr. MORRISON. That was during this period.

Mr. CRAWFORD. What period?

WITNESS. 1904 to 1905; when they had these wagons on.

Q. He says that it was 1903 when he lost all of these customers. Is he right about that date?—A. I think he is mistaken on that.

Q. You were both testifying as to the time when these cuts were made—so the year is not very material. Did you go to any of the

Standard's trade yourself, personally, and show them what these wagons were doing?—A. No, sir; I did not. I had too many other things to attend to.

Q. But, as I understand, you directed your men in that regard?—A. Yes, sir.

13995 Q. Do you know whether they carried out your directions or not?—A. They reported they did.

Mr. CRAWFORD. I move to strike out the witness's answer as hearsay.

Q. Well, you know the price that they were selling for at that time, don't you?—A. Yes, sir; we met their prices, and of course that showed that they had gone and offered the oil.

Mr. CAMPBELL. You met the price that it was reported to you they were making?

WITNESS. That these special wagons were making; where we had to meet them, of course we had to reduce our price to make it the same.

Mr. CAMPBELL. You meant the price that it was reported to you it was making?

Mr. MORRISON. Don't answer these questions at all here. Wait until they get to their proper cross-examination. I object to it until then.

Q. Mr. Frye said that "Mr. Smith told the people that as long as we were in business we will sell you half a cent less than the Atlantic Refining Company ever will sell." Did you make any such statement as that to anybody?—A. I positively did not.

Q. Do you remember what the prices were in Philadelphia from 1903 up?—A. The prices in 1903 were 6 and 6½ cents.

Q. Was that during the time that these special wagons were on the street?—A. 1903? The special wagons didn't go on until the latter end of 1903 or early in 1904.

Q. As I understand, up until the time that these special wagons did go on, you and the Atlantic and all of them were main-

13996 taining the same price?—A. We were all getting the same figure; yes, sir. I merely followed their prices.

Q. Who does make the market price for oil in Philadelphia?

Mr. CRAWFORD. I object to that as calling for inference—matter of judgment.

A. The largest producer of oil always makes the price; and that was the Atlantic. They do now, to-day, of course.

Mr. CRAWFORD. I move to strike that out as calling for the inference and opinion of the witness; as being, rather, an expression of an opinion of the witness.

Q. How low did oil get during the time that these special wagons were on the streets?—A. 5 and 5½ cents.

Q. Did you have any report from your drivers, or from any of your men in the field, your son or anybody else who came in contact with the trade and knew the business, concerning where these special wagons got their oil?

Mr. CAMPBELL. That is objected to, on the ground——

Q. The question is whether you received any such report.—A. I did.

Mr. CAMPBELL——that the report is immaterial.

Mr. CRAWFORD. I ask to have that objection go in ahead of the answer, because it was started and the witness broke in.

Mr. MORRISON. Yes; that is right.

Mr. CRAWFORD. Go ahead and finish the objection.

Mr. CAMPBELL. That is objected to, on the ground that what was reported to the witness on this subject is immaterial.

Mr. CRAWFORD. And hearsay.

13997 Q. Did you make any personal investigation yourself to see whether or not they were paying a license or whether the Atlantic was paying a license for them?—A. I did.

Q. Do you know about when that was?—A. That is a very difficult question to answer. I think it was in 1904. I believe it was in 1904. 1903 or 1904. 1904.

Q. What did you ascertain?

Mr. CRAWFORD. I object to it as incompetent. The matter being one of public record, the records should be produced. Or, if it is in the personal knowledge of some witness, that witness should be called.

A. I went to the city hall to find out whether these wagons belonged to the parties that were driving them; for, if they did, they were compelled to pay a city license. I found that they were not paying a city license. The department of city property investigated it, and before they got through the end of the year—about the end of the year I believe it was—they turned it all over to the Atlantic and claimed the Atlantic as the owner of the wagons. There was but one man that was supposed to have paid a license, but I am very doubtful whether he paid it afterwards. He was about paying a license—my son said he thought he did; he was about paying a license, but the rest of them all came in and claimed the Atlantic as the source from which they came and that they were working for the Atlantic Refining Company.

Mr. CRAWFORD. I move to strike out the witness' entire answer, on the grounds (1) that it is clearly all based upon hearsay; (2) that it

13998 purports to give results of what are (if the facts existed at all) matters of city record, and the records should be produced; (3) that they are based upon inferences and opinions of this witness and of others; (4) that the testimony does not even purport to be based upon hearsay of which this witness himself was the first recipient, but it is second or third hand hearsay.

Q. Now, you had all this information gathered up, as you have testified, from your interviews at the city hall, from your interviews with your drivers and your managers in the field, and from your own personal contact with the trade; and that is what you based these acts upon that Mr. Frye testified about, is it?

Mr. CRAWFORD. I object to the question and to any answer to it, on the ground that it calls for hearsay and is generally incompetent,

except so far as the evidence may be offered to explain the motive of the witness in any price he may have made; and to that extent it is not objected to.

A. Yes, sir. I knew positively, and they afterwards acknowledged, that they were the Atlantic people, because they assumed the Atlantic name shortly afterwards.

Mr. CRAWFORD. I object, and move to strike out everything about "they" (whoever they are) acknowledging something as incompetent and hearsay, except, as before stated, so far as it is offered to show the motive of the witness; and as to that it is not objected to.

Cross-examination by Mr. CRAWFORD:

Q. Mr. Smith, as I understand, all the knowledge that you claim to have in regard to the prices that were made by the
13999 Atlantic Refining Company or by these wagons that you have been speaking about throughout the period as to which you have testified—all your knowledge about that you derived from information which either your son gave you or other people gave you; is that correct?—A. No, sir.

Q. What other source of information had you?—A. Where there was a large customer I was referred to them to look after them. In the case of James Bell & Company——

Q. Don't go into details. Do you mean to add to that that you got information from customers?—A. Yes, sir.

Q. Was there any other source of information than your son and the customers and drivers?—A. None that I am aware of. I don't know how we could have any other.

Q. At any rate you didn't have any other source of information than that as to those prices?—A. No, sir.

Q. And as to most of them, as I understand, your information came to you through your son?—A. And my drivers came in contact with these customers.

Q. Most of it came to you through your son and your drivers; and that applies to the prices of what you have spoken of as special wagons, does it?—A. Yes, sir.

Q. And also, generally, as to what you have testified about the prices of the Atlantic Refining Company?—A. As to the prices made by the special wagons to my trade.

Q. Well, the prices that they made specially, or made otherwise, you mean to testify to the same?—A. Well, yes; but this is out of their special wagons. They had their own prices to their own customers out of their other wagons.

14000 Q. I am not asking you as to the particular price, but I am asking you as to your knowledge concerning the price. It all comes from the same general sources, does it?—A. Yes, sir.

Q. Apart from the subject of this investigation which you say you followed, how do you know that these special wagons were owned by the Atlantic Refining Company?—A. From the information that I received from the city department, from the department of markets and city property, who issue the licenses.

Q. Was that in connection with this investigation that you made about licenses?—A. About the licenses; yes, sir.

Q. Apart from that, what other knowledge have you?—A. Well, I knew that they were loading at the Atlantic Refining Company's——

Q. Did you see them?—A. I didn't see them. My son was there and saw them loading.

Q. You took it then, on the information that your son brought you?—A. Yes, sir. And the men acknowledged it themselves.

Q. What?—A. The men. This George Hill acknowledged it himself.

Q. To you?—A. Not to me in person.

Q. To somebody that told you, did he?—A. Well, yes.

Q. To your son?—A. Yes.

Q. And your son told you; is that it?—A. He acknowledged that he was loading at the Atlantic, and was seen to come out from there.

Q. Wait a minute. Did he acknowledge it to your son and did your son tell you?—A. Well, he did. Acknowledged that he
14001 was loading there. And to many other people.

Q. But all your knowledge is what your son or other people told you about the acknowledgment?—A. Well, that is what I stated. I didn't see them loaded.

Q. What the acknowledgment was, if he did make an acknowledgment, so far as your information goes, was that he got his oil from the Atlantic Refining Company, wasn't it?—A. Yes, sir.

Q. And that is all, on that point?—A. That is all, as far as that part went.

Q. Yes. Now, for how long a time were you cutting prices to the Atlantic Refining Company's customers in what you call "retaliation?"—A. Only as long as they continued to go to my customers.

Q. How long was it?—A. I don't know. I presume between a year and a year and a half.

Q. And during that time you directed your drivers to cut a half cent or——A. No, sir; I didn't direct them to do anything of the kind.

Q. What did you direct them to do?—A. I directed them to merely follow the Atlantic Refining Company's prices that they made.

Q. The prices that your drivers, then, made under your direction, were a quarter or a half a cent below the regular price of the Atlantic Refining Company?—A. The regular wagons of the Atlantic Refining Company, but not of the others.

Q. Well, the regular wagons, it was below that?—A. Yes, sir.

Q. Did you make that difference to all your customers?—A. Yes, sir.

14002 Q. To your entire trade?—A. Yes, sir.

Q. Did that price, the reduced price, appear upon the tickets that you gave?—A. Yes, sir.

Q. Whether or not this estimate of 600 customers which you took away from the Atlantic Refining Company was accurate, it is a fact

that you took a good many customers away, isn't it, at that time?—A. Oh, I guess we took some of them.

Q. You took a great many, didn't you?—A. I couldn't tell you how many I took.

By Mr. CAMPBELL:

Q. How long did you say you had been doing business in Philadelphia?—A. 44 years.

Q. That, you mean, in the oil business?—A. Yes, sir.

Q. All of that time under the name of Charles K. Smith & Company?—A. No, sir; originally with William King; then William King & Company. I was the "Company."

Q. And how long did that firm continue?—A. About 12 years.

Q. Until—do you remember the date when it was changed?—A. No; I do not. Yes; I do. I went into business centennial year, 1876. That was just 11 years. I went into the oil business with Mr. King in 1865.

Q. In 1865, and you continued with him 11 years?—A. Yes, sir; up until 1876, when we dissolved partnership and I went in for myself.

Q. And then what became the firm name? Under what name did you do business?—A. "Charles K. Smith & Company." Charles K. Smith, trading as Charles K. Smith & Company. I had no copartner at that time.

14003 Q. So you were doing business as Charles K. Smith & Company, at Philadelphia, since 1876?—A. Yes, sir.

Q. In what particular branch or branches of the oil business have you been engaged?—A. Originally we were jobbing oil; we didn't manufacture. In 1865 the oil business was in its infancy. I think that was a little previous to Mr. Rockefeller's experience. We purchased from small refineries in the West—Natrona, Patrona, Tarentum——

Q. Well, without going into detail——A. We were jobbing oil.

Q. You were jobbing oil at Philadelphia until when?—A. For about five years before Mr. King built his oil refinery.

Q. And then you entered into the manufacture of oil?—A. Petroleum oil; yes, sir.

Q. And the sale of oil?—A. The sale of all kinds of oil.

Q. Getting down, say, to the year 1899 or 1900, what was your business in Philadelphia then?—A. I was in the oil business, in the oil jobbing business, and had an oil refinery.

Q. You had the refinery and you sold your refined oil?—A. I manufactured refined oil and lubricators and sold them.

Q. Sold them in Philadelphia and through Pennsylvania?—A. Yes; or outside of Pennsylvania; any place at all.

Q. About that time (1899 and 1900) what was your method of delivery?—A. Of the refined oil?

Q. Yes.—A. In barrels. We sold to the wholesale drug and grocery trade and delivered to them in barrels and to the re-

14004 tail grocers in barrels also.

Q. How much of a business did you do with the retail grocers as early as that?—A. A very large amount.

Q. And you sold to them in barrels?—A. In barrels; yes, sir.

Q. Did you sell that oil in bulk, or did you sell it by the barrel?—A. By the barrel. So much per gallon, barrels included.

Q. Shortly after that you changed your method of delivery in Philadelphia, did you not? That is, you began selling in cans?—A. In bulk, from cans.

Q. You began selling in bulk from the cans?—A. Yes, sir.

Q. Can you place that pretty nearly, as to date?—A. The first wagon went out with the cans about the latter part of 1902, I think.

Q. That was after the Standard Oil Company had begun selling by tank wagon in Philadelphia?—A. Yes, sir.

Q. And the trade that you generally reached by that method of delivery was the trade that was buying from the tank wagon, was it not?—A. Had been buying from me a good bit of it in barrels.

Q. And also was buying from the tank wagon?—A. Yes. And I found that they preferred having it delivered in bulk and I started to accommodate them.

Q. The idea was to compete for the tank-wagon trade, was it not?—A. Yes. The storekeepers didn't want to bother pumping out of the barrels, and wanted it delivered in bulk, and we were compelled to go into it.

Q. And the trade that you sought by that method of delivery, as you gradually extended it, was the trade that had been
14005 educated up to the tank-wagon service by the Atlantic Refining Company?—A. They had been buying originally in barrels, but were then buying, not from the Atlantic Refining Company alone, but from Crew-Levick and a number of other independents.

Q. Who also had installed tank-wagon service?—A. Yes, sir. They were delivering before I was, in tank wagons, the other independents were.

Q. So that it was the latter part of 1902 that you followed the Atlantic Refining Company and these other concerns——A. Yes, sir.

Q. ——who had begun a tank-wagon service in Philadelphia?—A. I didn't put the tanks on until 1903.

Q. And then, as I understand it, from my information (I don't think you have testified on the point) you discontinued that method of delivery in cans?—A. In cans, we discontinued because it was inconvenient. We had to send it out on a truck in 10-gallon cans, so I had tank wagons constructed holding from 750 to 1,000 gallons apiece.

Q. Did you discontinue that truck wagon again in the winter of 1903, for a short time?—A. No, sir; it was in 1902 that it ran; the latter part of 1902.

Q. Did you discontinue it in the winter of 1902 for a short period?—A. No; I think not. I think it ran all winter and I continued it until I took it off entirely.

Q. Until you substituted the tank wagons?—A. Until I substituted the tank wagons. Because I had tank wagons building then.

Q. Now, that tank-wagon service that you built up, then, 14006 in Philadelphia was more or less under the charge of your son, was it not?—A. Well, yes; it was, under the charge of my son.

Q. That was his special line of business?—A. And he reported to me; yes.

Q. Well, he was in immediate charge of that business?—A. Yes.

Q. Visiting the trade?—A. Yes, sir.

Q. And you had general supervision over him?—A. Yes, sir.

Q. You said, in answer to a question asked you by Mr. Morrison, that you had not made a certain representation to the trade which Mr. Frye testified that Mr. Smith made. By that you mean to say that you yourself made no such representation?—A. I never made it nor never authorized it to be made.

Q. Whether your son, Mr. Smith, made it or not, of course you don't know?—A. Well, I am satisfied—it may have been made by a wagon man, but not by my son; he has too good sense.

Q. I think you said, in answer to one of Mr. Morrison's questions, that there may have been a little cutting of prices on your part there in Philadelphia to Atlantic Refining Company's customers, sometime in 1903?—A. No; I said that when that wagon first started with the cans I didn't know that there was; but there might have been, because the young man that I had on that wagon turned out to be very unreliable, and that is the reason I took him off and never put him on again.

Q. And he might have been making some cut prices, then?—A. He might have, but I don't know that he did. I am giving you the benefit of the doubt.

14007 Q. My records show that in July, 1903, Charles K. Smith & Company were reported to us as having supplied five large buyers who had formerly been buying from the Atlantic Refining Company, at a price of 5¼ cents.

Mr. MORRISON. You speak about your records. Do you mean any record in this case?

Q. Have you any recollection of that?—A. No, sir. We had no such prices in that year. We had those prices later on, afterwards. In 1904 and 1905 we had those prices, made by the other people, which I had to follow. No; I never——

Q. You don't recollect that?—A. No, sir; we didn't do anything of the kind.

Q. Do you remember when your next tank wagon was added there in Philadelphia?—A. I started early in 1903 with a new tank wagon in Germantown and Chestnut Hill, and then the Mephisto I purchased from a party from New York that brought it to Philadelphia; it had been used a little over here, and it had the word "Mephisto" on it, and we were in a hurry to get it out, and just let it

go with that name on; never to run it under the name of "Mephisto" to deceive anybody, because it was Charles K. Smith & Company's slip memorandums or bills that went with each purchase from that wagon; and that was run in the lower end of the city. And then I kept adding tank after tank, until I am running ten tank wagons now.

Q. So that the institution of that tank-wagon service in Philadelphia has been successful, has it not?—A. Not any more than the barrel business was.

Q. I mean the tank-wagon service as a substitute for the
14008 barrel service has been successful?—A. It had been; yes, because it was more convenient for the people—they didn't like pumping out of a barrel.

Q. And your tank wagon business, as you say, has increased from one tank wagon so that you now require ten tank wagons to supply your trade, delivered in that manner?—A. Yes; but I formerly sold thousands of gallons of oil in barrels instead of in tank wagons, sometimes as much as from five hundred to a thousand a day. It is not as large now as it was then.

Q. And now you are selling to the trade there both in barrels and by tank wagon?—A. Yes, sir; if they want it, but very little in barrels in Philadelphia; but shipping to the country and other points, Mexico and different places, we send in barrels.

By Mr. MORRISON:

Q. Mr. Campbell asked you whether or not your business has not increased from one tank wagon to ten tank wagons. When you put out the first tank wagon, delivering in these ten gallon cans, were you also at the same time delivering to a part of your trade in barrels?—A. Yes, sir; a great deal of it then in barrels when we put out those ten gallon cans.

Q. And as I understand you, you gradually substituted the tank wagon service for the barrel service?—A. Yes, sir; that is correct. People get a little lazy about——

Q. Now, where is your son?—A. My son is laid up with a compound fracture of the right leg.

Q. Is he able to be out?—A. No, sir; he isn't, and won't be likely
to be for the next five or six weeks. When cranking up his
14009 automobile in his garage his right foot slipped under him and the bones protruded—came through the pants and all. Terrible.

14010 CHRISTIAN M. DREDGER, recalled on behalf of the petitioner, in rebuttal, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Mr. Dredger, you were subpœnaed to produce records, books, or statements showing the quantity of the several grades of illuminating oil and naphtha sold by each of the several marketing companies or

departments controlled by the Standard Oil Company or the trustees of the Standard Oil Trust, and showing the amount of net earnings, and of the net earnings per barrel or gallon, in each of said quantities, for each of the years from 1886 to 1894, both inclusive. Have you made up any statement showing that, or produced any records or books or papers showing those facts?—A. No, sir.

Q. We are referring now to the marketing companies, you understand?—A. Yes, sir.

Q. Haven't you the same sheets or reports from which you made up the year 1895?—A. No, sir.

Q. Where did you get the records for the year 1895? I don't know but you stated on your other examination that you made them up from reports made to the office?—A. Yes, sir.

Q. In that there was one estimate for the Standard of Kentucky?—A. Yes, sir.

Q. Now, haven't you got the same information for years prior to 1895?—A. No, sir.

Q. You have no records at all, no papers or documents, from which you can procure that?—A. No, sir.

Q. Have you for any of the companies?—A. No, sir.

14011 Q. How did it happen that they ended at the year 1895? Why is it that you cannot get them for prior years as well as 1895?—A. Why, to the best of my knowledge the reports began to come in about that time—those reports.

Q. Have you any data which bears on the subject of the profits of the marketing companies prior to 1895?—A. No, sir.

Mr. KELLOGG. These are carefully described in this subpœna. I think I will just offer this subpœna.

The subpœna referred to was marked "Petitioners' Exhibit 952."

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 952, which is the original subpœna, Mr. Rosenthal, with the return of the marshal on it.

Q. Referring to subdivision "b," petitioners' Exhibit 952, which asks for the average annual price received by each of the several refineries owned or controlled by the Standard Oil Company or the Standard Oil trustees, for the same period (1886 to 1894 inclusive), have you those records?—A. Yes, sir.

Mr. KELLOGG. Have you them with you, Mr. Crawford?

(Mr. Crawford produced some papers.

Two sheets were marked petitioners' Exhibit 953, sheets 1 and 2.

Two sheets of paper were marked petitioners' Exhibit 954, sheets 1 and 2.

Papers marked petitioners' Exhibit 955, pages 1 to 13, both inclusive.)

14012 Q. Please state what Exhibit 953, in two sheets, is.—A. The exhibits referred to show the average net bulk prices realized by all refineries for home trade naphtha deliveries for the years 1887 to 1894, inclusive.

Q. Please state what Exhibit 954, in two sheets, is.—A. It gives the average net bulk price realized by all refineries for home trade deliveries of refined oil for the years 1886 to 1894, each year separately.

Q. Are these two exhibits, 953 and 954, made up in the same manner as the years 1895 and subsequent?—A. Yes, sir.

Q. What is Exhibit 955?—A. Exhibit 955 shows the average net bulk prices realized by the different refineries for home trade deliveries of Standard White and Water White oil, separately.

Q. You testified before that you made up the year 1895 from statements in the office that you procured?—A. Yes, sir.

Q. What kind of statements were those? Were they furnished directly by the marketing companies?—A. Yes, sir.

Q. But had not been compiled?—A. No, sir.

Q. Do you mean to say that the marketing companies never furnished any statements at all as to their profits until 1895?—A. Not to our office.

Q. Where did they furnish them?—A. That I don't know.

Q. Have you got any copies of those statements from which you made up the year 1895?—A. Yes, sir.

Q. I wish you would bring in, at 2 o'clock, some of those
14013 statements so as to show us the kind of statement you made that up from, will you?—A. Yes, sir.

Q. Bring them all in, if you have them, from which you made up the year 1895.—A. Yes, sir.

Q. Did you get those from your office or from the marketing companies?—A. Why, they were in our office.

Q. In your office?—A. Yes, sir.

Q. Were you there in 1895?—A. Yes, sir.

Q. Were you there in 1894?—A. Yes, sir.

Q. And you did not receive any such statements in 1894?—A. I don't think so. To the best of my recollection it was a new report and was not compiled until about 1899.

Q. Have you got the information in relation to subdivision C of this Exhibit 952—the marketing quotations of Illinois crude and of Mid-Continent crude—for the years 1901 to 1907, both inclusive?—A. Yes, sir. [Producing papers.]

Papers marked "Petitioner's Exhibit 956" and "Petitioner's Exhibit 957."

Q. Please state what Exhibits 956 and 957 are.—A. Exhibit 956 represents the quotations of Illinois crude oil, 32 gravity, for the years 1906 and 1907; and Exhibit 957 represents the quotations of Mid-Continent crude, 32 gravity, for the years 1901 to 1907.

Mr. CRAWFORD. That means 32 or better, doesn't it?

WITNESS. Yes, sir.

Q. How are the averages made up in these exhibits?—A. The number of days in the year, adding the quotations each day and dividing the total by 365.

14014 Q. They are not made up on the weighted averages?—A. No, sir.

Q. You have no records for California and Texas?—A. No, sir.

Papers marked "Petitioner's Exhibits 958, 959, and 960."

Q. Exhibits 958, 959, and 960 show the crude stocks of each field separately of the Pennsylvania, the Illinois, and the Mid-Continent—the latter being called in this the Kansas field?—A. Yes, sir.

Q. The stocks held by the Standard Oil Company pipe lines?—A. Yes, sir.

Q. The reason Kansas and Illinois fields do not show all the years is because those fields were not in existence at that time, producing oils?—A. Yes, sir.

Q. You have shown them for the years they have produced oils?—A. Yes, sir.

Q. That is, all the years you have taken oils from them?—A. Yes; and the first years that they show stocks.

(A recess was here taken until 2 o'clock p. m.)

14015 Papers were marked "Petitioners' Exhibits 956, 957, 958, 959, and 960."

Mr. KELLOGG. I offer in evidence petitioners' Exhibits 956, 957, 958, 959, 960, and 952.

Q. Have you tried to get from the marketing companies the information called for, to wit, the net earnings and net earnings per barrel of the marketing companies for those years (1886 to 1894, inclusive), or either one of them?—A. No, sir.

Q. Your search was confined to your own office?—A. Yes, sir.

Mr. KELLOGG. The information furnished by Mr. Dredger, in compliance with subdivision b of this subpœna, constituting Exhibits (for identification) 953, 954, and 955, being the average selling price of the refiners, we do not at this time desire to offer in evidence, because we only wish to use it in connection with the profits of the marketing companies, to show the price of the oil to the retailer; and as Mr. Dredger testifies he has not that information back of 1895, at this time we do not desire to offer those exhibits.

Mr. ROSENTHAL. The defendants reserve the right to offer them in evidence on behalf of the defendants, as marked and identified.

Mr. KELLOGG. We reserve also the right to offer them, Mr. Rosenthal.

Mr. ROSENTHAL. Certainly.

Mr. KELLOGG. And if we can get such information as we want, we would like to offer them.

(Papers were marked "Petitioners' Exhibits 961 and 962.")

Q. I show you petitioners' Exhibits 961 and 962. Were those exhibits prepared in pursuance of the Government's request on
14016 you to ascertain whether it is not a fact that in the Rocky Mountain and Pacific coast States the proportion of oil sold in barrels, bulk, and cans, as distinguished from the oil sold by tank wagon, is not much greater than in the Eastern States generally?—A. Yes, sir.

Q. Does petitioners' Exhibit 961 show the percentage of oil sold in barrels, bulk, and cases for each marketing district separately?—A. Yes, sir.

Q. And does petitioners' Exhibit 962, under the heading "Increased sales," show the percentage of sales——

Mr. CRAWFORD. You better let him state what it does show, Mr. Kellogg.

Q. What does Exhibit 962 show?—A. Exhibit 962 shows the sales in the Rocky Mountain and Pacific coast States——

Q. You mean the tank-wagon sales?—A. Tank-wagon sales; increased to same basis as all other marketing companies; that is, increased from 41.3% to bring it up to 77.1%.

By Mr. CRAWFORD:

Q. That is, in considering those stations you assumed that their tank-wagon sales were what they would have been if they had been 77.1% of the whole sales in those stations?—A. Yes, sir.

Q. Instead of 41.3?—A. Instead of 41.3.

Q. And you have corrected all the percentages accordingly?—A. Yes, sir.

Q. And, as I understand, under the head "Regular sales," those are the actual percentages as you presented them in a previous exhibit?—A. Yes, sir.

Q. And "Increased sales" are the corrected percentages, on
14017 this new assumption?—A. Yes, sir.

Q. And under the head "Per cent to Government," you mean this calculation is made up with reference to the stations which are included in the petitioners' exhibits?—A. Yes, sir.

Q. Under the head of "Per cent total" you mean the percentages made up with reference to all stations?—A. Yes, sir.

Mr. KELLOGG. I offer in evidence petitioners' Exhibits 961 and 962.

14018 FORREST M. TOWL, recalled on behalf of the petitioner, in rebuttal, testified as follows:

Direct-examination by Mr. KELLOGG:

Papers were marked "Petitioner's Exhibits 964 to 976," both inclusive.

Q. I show you petitioner's Exhibit 964. Please state what that is.—A. A working map of the Kansas-Whiting line of the Prairie Oil & Gas Company, from Humboldt, Kansas, to Griffith, Indiana.

Q. The figures on the side, commencing with zero, 5, 10, 15, etc., indicate what?—A. Indicate miles from Humboldt.

Q. The cross lines are what?—A. The light cross lines are one-mile sections. The heavy cross lines are five miles apart. The heavy line that comes in mostly at irregular intervals, and having a number under it, is at the pumping stations. The other places, where the sizes of the pipe change, are what is known as gate houses.

Q. The sizes of the pipes are indicated by the marks at the bottom, where they are marked "6 inch," "8 inch," and "12 inch"?—A. Yes, sir.

Q. That is what you call a diagram of your Prairie Oil & Gas line?—A. A working map; yes.

Q. Do petitioner's Exhibits 965 to 976, respectively, give the same information as to all the other trunk pipe lines?—A. Yes, sir.

Q. These are trunk lines alone?—A. Yes, sir. There are some lines that are not trunk lines, that are shown coming in, to
14019 the trunk lines.

Q. Yes; but that information is contained on the exhibits?—A. Yes. Where the lines come in like this [indicating] it shows that they are not trunk lines.

Q. Do the maps show on their face where there are any that are not trunk lines?—A. It shows the approximate location of incoming gathering lines where they come into the trunk lines.

Mr. KELLOGG. At present I will simply identify by Mr. Towl petitioners' Exhibits 964 to 976, inclusive.

14020 E. D. DURAND, recalled in behalf of petitioners, in rebuttal, testified as follows:

By Mr. KELLOGG:

Three sheets of paper were marked "Petitioners' Exhibit 977."

Q. What is petitioners' Exhibit 977?—A. Petitioners' Exhibit 977 is a statement showing the production of crude oil of the Pennsylvania field, the Lima-Indiana field, the Mid-Continent field, and the Illinois field, separately, and the total for those fields combined; also the average annual price per barrel for the oil of each of those fields, and the combined average price per barrel for all of these fields together, obtained by taking into account the quantity of production in each field, respectively. It covers the years 1885 to 1907. Where there are no figures given for any of the fields it is because the production either did not exist at that time or was so exceedingly small as to be insignificant in such a total.

Q. Are these productions taken from tables in evidence or the reports of the Geological Survey?—A. The production figures are taken altogether from the reports of the Geological Survey, and the pages of such reports as were used are referred to in the attached memorandum.

Q. And the prices?—A. The figures as to prices are in part taken from exhibits in this case (defendants' exhibits), the numbers of which are specified, and in part from the reports of the Geological Survey. Those reports are designated by the words
14021 "Production of petroleum," that being the title of the reports. They are also taken in part, so far as the prices of Lima crude are concerned, from Derrick's Handbook of Petroleum, the figures for the Geological Survey not being complete and accurate for some of the earlier years. The sources of all the figures showing the number of

years for which the figures from each source were taken are indicated in the memorandum attached.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 977.

Mr. ROSENTHAL. I object to it upon the ground that it is not rebuttal and opens up new matter. I will take time to examine and verify the figures before cross-examining Mr. Durand upon it.

Mr. KELLOGG. I think they correspond to their figures. Don't they?

WITNESS. As far as they have put in such figures; but the production figures are mostly, if not wholly, new matter—that has not been put in by any previous exhibit.

Mr. ROSENTHAL. Which figures?

WITNESS. The production figures.

Mr. ROSENTHAL. They are taken from what?

WITNESS. From the Geological Survey reports, all of them.

Mr. ROSENTHAL. All of them?

WITNESS. Yes; I think so. I can not tell without examining this memorandum. The memorandum is a correct statement of the sources of the information.

Mr. ROSENTHAL. And how about the price figures—the price per barrel?

14023 WITNESS. I can give you that exactly by reading this memorandum.

Mr. ROSENTHAL. It all shows on the memorandum?

WITNESS. It all shows on the memorandum.

Mr. ROSENTHAL. Very well. We will take time to examine the memorandum.

WITNESS. I will state that the price per barrel is expressed in round cents, the fractions of cents being omitted; the reason for that being that one of the defendants' exhibits, giving the prices of Pennsylvania and Lima crude, did not give the fractions, which fractions appear in the report of the Geological Survey. And in order to make it uniform I disregarded those fractions of cents.

Q. The same as their exhibit?—A. The same as their exhibit.

Q. The last column in this exhibit shows the average price for all the fields combined, reduced to cents per gallon by dividing the price per barrel by 42 gallons.

Q. What is petitioners' Exhibit 978?—A. Petitioners' Exhibit 978 is a statement of the stocks of the several grades of crude oil, Appalachian or Pennsylvania, Lima-Indiana, Mid-Continent, and Illinois, at the end of each year from 1885 to 1907. These stocks are compiled from the reports of the Geological Survey, and represent the stocks held by all the pipe lines which report to the survey, including the Standard pipe lines and others. Some of them are compiled from other sources, which are stated in the footnote, for instance, Derrick's Handbook of Petroleum particularly.

Q. There is in evidence in this case a statement of the stocks controlled or owned by the Standard's pipe lines?—A. I believe so. I have seen such a statement.

14023 Q. Now, this simply adds the outside pipe lines—the reports? Which pipe lines, can you tell?—A. They include, during recent years, the Tidewater pipe lines, the United States pipe line, the Producers & Refiners pipe line, the Emery pipe line, I believe, besides the Standard's pipe lines. In some of the earlier years there were other pipe lines, outside of the Standard system, which reported their stocks. The figures published by the Geological Survey are not available for the Standard's pipe lines separately, and I compiled these from the figures as there given, which include the Standard's pipe lines, but do not show them separately. The table also shows the prices of Pennsylvania oil and Lima oil for each year, the same as appear in petitioners' Exhibit 977. I compared these figures of stocks with the figures given by the Standard Oil Company as the stocks held by the Standard pipe lines, and while these are, of course, larger, they show substantially the same changes in the relative stocks as are here shown. The stocks of the Standard's pipe lines, as appears in their exhibits, being in most cases approximately nine-tenths of the total stock.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 978.

Mr. ROSENTHAL. I object to Exhibit 978, on the ground that it is not rebuttal. We will check up the authorities noted on the bottom before cross-examining.

Q. What is petitioners' Exhibit 979?—A. Petitioners' Exhibit 979 is a comparison of what is known as Dun's Index Number of the price of commodities generally from the year 1870 to 1906, and the 14024 index number published by the Bureau of Labor, which latter covers 258 commodities and which covers only the years 1890 to 1906. The source of the figures called Dun's Index Numbers is indicated as in the Statistical Abstract of the United States, which are published originally in Dun's Trade Review and are considered by statisticians and economists generally as reasonably accurate representation of the general movement of the prices of commodities.

Q. Professor Johnson produced an index number of the average of all commodities. That is the same as appears here in the column headed "Bureau of Labor Index Number, 258 commodities?"—A. It is often referred to in this testimony of Professor Johnson as being "All commodities."

Q. Those produced by Professor Johnson were how many in number?—A. 258 commodities.

Q. Is that the list, the average of all commodities, about which he testified?—A. It is. These are the same figures that Professor Johnson put in as far back as 1895, and he put in a diagram showing them back to 1890. So far as I recall, he did not put in the actual figures or index numbers for the years 1890 to 1894, which are here given.

Q. Is Dun's table or index number of the value of commodities a well-known compilation?—A. Very well known, indeed.

Mr. CRAWFORD. It is not prepared by the Government, though?

WITNESS. No.

Mr. CRAWFORD. It is a private compilation?

WITNESS. A private compilation, yes. It is published by the Government, but simply reproduced from this private publication.

14025 Q. It is reproduced by the Government?—A. It is reproduced by the Government in what is called the "Statistical Abstract of the United States." The Government does not assume any responsibility for the accuracy of the figures, I understand.

Q. In its range of prices between 1890 and 1906, inclusive, does it substantially compare with the Bureau of Labor's average prices of commodities testified to by Mr. Johnson?—A. Generally speaking it compares very closely. There are only one or two years in which the direction of movement differs in the two sets of index numbers. Practically every year the direction of movement is the same, and the amount of movement very nearly the same.

Q. In Dun's Index Number of the average value of commodities he uses a much larger number of commodities than that included by Professor Johnson, does he not?

Mr. ROSENTHAL. I object to that, on the ground that the publication itself is the best evidence.

A. My recollection is that they so state in the publication——

Q. You have got it, haven't you—the original publication of Dun's?—A. In the Statistical Abstract of the United States is published a description of the method of preparing Dun's Index Number quoted from Dun's Review. I can not quote that statement accurately, but it appears in that publication.

Q. Can't you get it?—A. I can get it very readily, yes. It can be attached to this exhibit, if you so desire.

Q. I would like to have it show as accurately as possible how it is made up, so it can be checked up.—A. I could state how they say it is made up, but it appears in the records.

14026 Q. I would like to have you get it accurately from the records. Can you get it?—A. Yes.

Q. Can you lay your hands on it now?—A. I think not. I would have to get it in some other office in this building, or probably in the Public Library or at Washington. I can put my hands on it very quickly, though.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 979.

Mr. ROSENTHAL. I object to that on the ground that it is not rebuttal; on the further ground that Dun's Index Number is not an official publication, and upon the further ground that the Government is estopped from in any wise contradicting the statistical information published by one of its own departments, to wit, the Bureau of Labor, a subdepartment of the Department of Commerce and Labor.

Mr. KELLOGG. I would like to state in regard to that, that Dun's tables compare with the Government's, which do not contradict it in the slightest degree. And as to the objection that it is not rebuttal,

it is merely offered to show and explain the table of average prices which you put in.

Q. Please state what petitioners' Exhibits 980 and 981 are.—A. Petitioners' Exhibit 980 is a comparison of the price of Water White oil for the years 1895 to 1898 with the price for 1903 to 1906, showing the percentage of advance; and also the index numbers for the first four years named and for the second four years, covering the prices of a large number of other commodities, being the same commodities as are listed in defendants' Exhibit 297, and showing the percentage of increase for the four years 1903 to 1906 combined over
14027 the four years 1895 to 1898 combined.

Q. This exhibit, then, simply takes defendants' Exhibit 297, and, instead of taking the year 1895 and comparing it with 1906, it compares the four years 1895 to 1898 with the four years 1903 to 1906?—A. That is correct.

Q. That is all, is it not?—A. That is all it is.

Q. The diagram illustrates that?—A. The diagram represents, at the lower point, the status of the price as being equal to 100 per cent for the first four years, and the point reached at the right-hand side of the diagram represents the per cent of increase over and above 100 for each of those commodities. The price of oil is shown in a red line, and the general price of all commodities combined is shown in a red line; the name of each commodity is shown at the right-hand side. In some cases, where it was necessary for clearness, a line has been drawn out to the name to show the connection with the proper line in the diagram. The diagram does not purport to show any changes from year to year, but is similar to the diagram put in by the defendants (I believe defendants' Exhibit 296) showing the price for the four years at the beginning and the price for the four years at the end only, and no changes beside.

Mr. ROSENTHAL. Do you take four years, or three years?

WITNESS. Four; 1895 to 1898, inclusive.

Mr. ROSENTHAL. And 1903 to 1906, inclusive?

WITNESS. Inclusive.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 981.

Q. Please explain why you took the four years at the beginning and the four years at the end.—A. For the reason that examina-
14028 tion of the figures of the prices of all for the years 1895 to 1906 separately, and the consideration of the price of crude oil shown in the exhibits for the years prior to 1895, indicate that the year 1895 was a very exceptional year in the price of refined oil.

Mr. ROSENTHAL. In your judgment, you mean?

WITNESS. In my judgment. [Continuing the answer.] And, consequently, that in order to moderate the influence of that year, in any comparison with later years, it is proper, in my judgment, to combine two or three other years with it (either years before or years after). Not having the years before, I have taken the years after. And for the further reason that the price of oil in 1906, in my judgment, was

somewhat exceptional, and that the influence of that year ought to be, in my judgment, in part moderated by combining it with several other years. For the further reason that it is the ordinary practice of statisticians, in comparing prices, either to show the prices for each and every year and to let the one seeing them make his own conclusions, or to combine groups of years in order to offset the possibility, and, in fact, the probability, of special conditions affecting the price in a way that would make it not typical. Petitioners' Exhibit 977 shows that the price of crude oil in 1895, for both the Pennsylvania and the Lima fields, was higher than at any time between 1885 and 1898, inclusive. The average price for the two fields combined, taking account of the quantity of oil produced in each, was 2.62 cents per gallon in 1895, which was just double the price in 1891,
14029 more than double the price in 1892, nearly double the price in 1893, and nearly a cent a gallon higher than the price in 1894, and also higher than the price in either 1896, 1897, or 1898. It appears from the exhibits in this case that there is a certain relationship between the price of crude oil and the price of refined oil, from which it is a logical inference that the price of refined oil, prior to 1895, for several years must have been appreciably lower than in 1895, and consequently that the year 1895 was exceptional as compared with both the years before and the years after—or several years before or after.

Q. These are your reasons——A. These are all reasons that I had for selecting these four years as a group instead of any one year by itself.

Mr. KELLOGG. You may ask any questions that you care to, Mr. Rosenthal, as we go along.

Mr. ROSENTHAL. I prefer to examine these exhibits a little more carefully.

Q. Please state what petitioners' Exhibit 982 is?—A. Petitioners' Exhibit 982 is a table showing the price of Water White oil in 1895 and in 1906, with the percentage of increase, and also showing the index numbers of certain specified commodities for the year 1895 and the year 1906, with the percentage of increase or decrease; also a similar comparison for the oil and for each commodity named for the series of years 1895 to 1898 as a whole, over against the series of years 1903 to 1906 as a whole. These index numbers of commodities are all taken from the Bureau of Labor bulletin, the same one from which the commodities listed in petitioners' Exhibit 981 were taken; that is, the same one from which the commodities
14030 named by Professor Johnson in defendants' Exhibit 279 were taken. These commodities have been selected as being commodities which showed less increase in price between 1895 and 1906 (those two years alone) than oil. They were selected for that purpose, and do not purport to be an average of all commodities, or anything of that sort. They are selected commodities, all of which show either a decrease in price between those years, or a less increase, than the price of refined oil.

Mr. CRAWFORD. These are not the ones that were on the defendants' chart?

WITNESS. None of these were on the defendants' exhibit or table, because all those were selected, apparently, because they showed an increase greater than oil.

Q. These were taken from the same sources of information as defendants' Exhibit 297?—A. Exactly the same source, but they are different commodities.

Q. Defendants' Exhibit 297 showed a list of thirty-three commodities, I believe?—A. About that number; yes. It showed a list of thirty-three commodities, including, however, among those oil itself; and also the average for all commodities given as one item; also wages per hour given as one item.

Q. Then it would be thirty commodities——A. Yes; thirty commodities, excluding the three I have just mentioned.

Q. Did you examine the source of information of the Bureau of Labor's bulletin?—A. I did.

Q. Petitioners' Exhibit 982 you have explained. The index numbers which you refer to were arrived at in the same way Professor Johnson explained, were they?—A. Exactly.

14031 Q. It is not necessary to go over that again.—A. The percentage of difference indicated in this column headed "Increase in 1906 over 1895" is exactly the same percentage of increase or decrease as would appear if you had the actual price of the commodity instead of the index number.

Q. Professor Johnson explained that, didn't he?—A. I think so.

Mr. KELLOGG. I offer petitioners' Exhibit 982 in evidence.

Q. Please state what defendants' Exhibit 983 is.—A. This is a comparison between the changes in the price of oil and the price of other specified commodities between 1895 and 1906, and also between the average for the group of years 1895 to 1898, inclusive, and the average for the group of years 1903 and 1906, inclusive. The commodities are all covered by the Bureau of Labor bulletin from which defendants' Exhibit 297 was taken, and the figures given here for those commodities are the index numbers appearing in that bulletin; not the actual prices, but, as I stated before, the per cent of increase or decrease is the same whether you use the index numbers or the actual prices. The list of commodities includes some of those which were shown by Professor Johnson in defendants' Exhibit 297, but includes others also. I have selected these commodities as being, in my judgment, the most important commodities, without reference to the question whether they have increased relatively more or relatively less than the price of coal. Of course no one knows exactly what the value of the total output of any one of these commodities is as compared with others. We have to use general judgment and information as to what are relatively important commodities. They were not selected with any reference

14032 whatever to the amount of increase or decrease in price which they might show.

Q. But as important commodities of commerce?—A. As important commodities of commerce.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 983.

Q. What is petitioners' Exhibit 984?—A. A statement showing the quantity of paraffin and paraffin wax exported from the United States each year since 1890, and the value thereof as reported by the Government, and the average price computed therefrom. The quantity is expressed in the statistical report of the Government in pounds. I have first computed the average price per pound and I have then computed the price per gallon, assuming that the average number of pounds in a gallon of paraffin was is 7-6/10 pounds.

Q. Is the quantity in pounds reported by the Government in the summary of commerce and finance?—A. It is.

Q. Is the total value?—A. It is. The other two figures are computations from those.

Q. Why do you take 7.6 pounds to the gallon?—A. Because from examinations and investigations that I have made it appears that that is substantially the average number of pounds per gallon. I have no statistical authority that I can here produce showing that fact, but that is the result of a considerable investigation that was made on that subject some time ago under my direction, it being necessary to get the figures in terms of so much per gallon if any combination of them was to be made or any comparison of the prices of oil, naphtha, etc., which are expressed in terms of gallons.

14033 Q. That was your reason for reducing it to gallons?—A. That was the reason.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 984.

Mr. ROSENTHAL. I object to it upon the ground that it is not rebuttal, but is new matter.

Q. Please state what petitioners' Exhibit 985 is.—A. Petitioners' Exhibit 985 is a statement showing the combined average prices of refined oil and naphtha together, and the combined average price of refined oil, naphtha, and paraffin wax (that is, paraffin wax and candles) taken together, taking account, in making these combinations, of the quantities of these respective articles delivered by the Standard Oil companies. In taking those quantities into account I have used, not the deliveries of the refineries to the marketing companies for the refined oil and naphtha, but the deliveries of the marketing companies, including those in the United States, Canada, and Mexico. The inclusion of Canada and Mexico is merely for convenience, on account of the considerable physical difficulty of separating the figures of Canada and Mexico from those of the United States, the figures being used merely for the purpose of weighing and the figures for Canada and Mexico being very small as compared with those of the United States; almost precisely the same result is obtained by that method as would have been obtained if we had taken the United States exclusively. That was merely as a matter of convenience. It can be changed if it is necessary, but I do not think

it would make any difference. The sources of all the information are shown on the exhibit; they are all from exhibits in this case.

14034 Q. What are petitioners' Exhibits 986 and 987?—A. Petitioners' Exhibit 986 is a comparison of the movement of the price of Water White oil and naphtha combined, as shown in petitioners' Exhibit 985, with the price of 258 commodities, as shown by the Bureau of Labor. In order to make the comparison, the prices of the oil and naphtha which are shown in the first column of prices have been reduced to the form of index numbers, by taking the average price for the entire period 1895 to 1906 (which is equal to 7.6 cents) and dividing it into the price for each year. That is, 1895 to 1906 being treated as 100, the prices for the other years would appear as the percentages or index numbers given in the second column.

Q. What you call the relative prices of 258 commodities—are those the same commodities which were called by Mr. Johnson, in defendants' Exhibit 297, the average of oil commodities?—A. Yes; and in several other exhibits. It is the same thing.

Q. That is called the average of all commodities, is it not?—A. It has been so called repeatedly in a number of exhibits, both in the defendants' exhibits and in some of those which I have just introduced—one or two others.

Q. On petitioners' Exhibit 987, at the commencement of it, is the year 1895. In the middle of the space; what is that intended to be?—A. The point where the line starts, in the middle of the space, represents the price for the year 1895. The point at the middle of each succeeding space under the number of the year, or under the date, represents the price in that year. A diagram of this sort is merely to connect together certain points, the lines simply connecting the points. This diagram, petitioners' Exhibit 987, corre-

14035 sponds exactly to petitioners' Exhibit 986.

Q. I show you petitioners' Exhibit 988. I wish you would explain that in connection with defendants' Exhibit 293–D.—A. Petitioners' Exhibit 988 is the same as defendants' Exhibit 293–D, with the exception of the last column. Defendants' Exhibit 293–D in the last column in effect compares the price for each year, 1896 to 1906, separately with the price for the year 1895. In my judgment, the price for the year 1895 is not a typical price. A comparison between that year and any other one year, or any other group of years, in my judgment, does not properly represent the relative change in the price of oil as compared with other commodities. I have, therefore, taken exactly the same figures and used the year 1897 as the basis for comparison, which is as fair a year at least as the year 1895.

Q. Well, as to whether it is or is not——A. That is immaterial.

Q. You don't give any information so far as this exhibit is concerned?—A. No. I have simply taken the year 1897; and therefore the last column in Exhibit 988 shows the difference above or below the price of 1897, whereas in defendants' Exhibit 293–D the last col-

umn shows the difference above or below the price of 1895. It is exactly the same exhibit, with another year taken as the basis of comparison; that is all.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 988.

Q. Petitioners' Exhibit 989 is the same thing, for naphtha, is it?—A. Yes. It corresponds exactly to petitioners' Exhibit 988, and is the same, except as to the last column, as defendants' Exhibit 293-E.

Mr. KELLOGG. I offer in evidence petitioners' Exhibit 989.

(An adjournment was here taken until the morning of Tuesday, January 12, 1909, at 10.30 o'clock a. m.)

14036 ROOM 515 CUSTOM-HOUSE, NEW YORK CITY,
Tuesday, January 12, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. F. B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. Douglas Campbell, Mr. W. Cleveland Runyon.

A recess was taken until 2 o'clock p. m.

L. J. DRAKE, a witness recalled in behalf of petitioner, testified as follows:

By Mr. KELLOGG:

Q. Mr. Drake, you have been subpœnaed and asked to produce any books, records, papers, and reports in your possession or under your control showing or tending to show the quantity of the several grades of illuminating oil and naphtha sold by each of the several marketing companies or departments controlled by the Standard Oil Company or the trustees of the Standard Oil Trust with which you are or have been connected, to wit, among others, the Standard Oil Company of Indiana, the Standard Oil Company of Illinois, the Standard Oil Company of Minnesota, The Consolidated Tank Line Company, and the P. C. Hanford Oil Company, and showing the amount of net earnings thereon, and of the net earnings per barrel or gallon on each of said quantities, for each of the years 1886 to 1894,
14037 both inclusive. Have you any such papers, records, or books?—A. No, sir.

Q. There has been produced in evidence the information back as far as 1895, covering this information asked for here. Have you any such information for any years prior to 1895?—A. No, sir.

Q. Have you got the average prices at which oil was sold to the retailers, in the companies that you represent, prior to 1895?—A. No, sir.

Q. You don't keep any such records?—A. No, sir.

Q. You do now, I suppose?—A. Average prices? No: we keep the prices as the current prices in effect.

Q. You keep the total sales and total receipts for each product now, by your selling companies, don't you?—A. We keep our own sales—the Indiana Company.

Q. That is what I mean. Now, you have no books, papers, or reports showing the prices at which you sold oil, or the average prices, in any of the companies that you have represented?—A. No, sir.

Q. Prior to 1895, I mean.—A. No, sir; I have not.

Q. Nor the amount sold by each?—A. No, sir.

Q. Nor the amount received?—A. No, sir.

Q. Nor the cost of selling?—A. No, sir.

Q. Haven't you had any such records?—A. I never had any such records as are referred to here [referring to the subpœna].

Q. What did you have, from which these reports were made?—A. We had charge of the marketing in the West, there, at that time.

Q. Just state the Standard of Indiana as an illustration. You had charge of the marketing prior to 1895—from 1891 or
14038 1892, say, to 1895.—A. Well, of course, the Standard of Indiana was not operating there at that time.

Q. It was in 1895?—A. Not in the West there—Nebraska or Iowa.

Q. It was in some places?—A. Yes, I think it was; but that was out of my jurisdiction.

Q. Weren't you connected with the Standard of Indiana at that time?—A. 1895?

Q. Yes.—A. No, sir.

Q. The Consolidated Tank Line, were you in that?—A. Yes, sir.

Q. It was operating, wasn't it?—A. Yes.

Q. Where?—A. In Iowa, Nebraska, South Dakota.

Q. The Consolidated Tank Line, what information or records did you have at the time, showing the prices?—A. I had the prices which were in effect at the different stations.

Q. And you had the quantity of sales?—A. I had the quantity of sales each month; yes, sir; at each one of the points.

Q. And for all points?—A. In our field; yes, sir.

Q. So you had the average prices?—A. We had the average prices at all points.

Q. You had the total barrels or gallons sold in the entire territory of the Consolidated Tank Line Company, didn't you?—A. No, sir; only for the division I had charge of.

Q. I mean the division you had charge of?—A. I knew just what we sold there; yes, sir.

Q. Now, take that division. You had the total sales?—A. Yes, sir.

Q. And you had the total sums received?—A. Yes, sir.

14039 Q. And therefore you could arrive at the average prices, couldn't you?—A. We could if we wanted to, I guess; yes.

Q. Didn't you make up such a statement?—A. No; we didn't make up any such statement.

Q. You made up average earnings per barrel, didn't you?—A. We had a statement made up each month, showing the comparative sales

at all stations, one month with another, what we sold and what our prices were at each station; yes, sir.

Q. In other words, you had the sales at each station and the prices at each station?—A. Yes, sir.

Q. And therefore you could add them up and arrive at the average price per barrel, couldn't you?—A. Yes, sir; we could.

Q. And you did, didn't you?—A. No, sir; we didn't.

Q. What did you do with those statements? Weren't they preserved?—A. I never kept them. They were only good for a memorandum. One month to another; that is all.

Q. Weren't they sent into the general office?—A. They might have been sent in there; I presume some of them were, not all of them.

Q. What office?—A. At that time, they would be sent to Cincinnati.

Q. You didn't send them, prior to 1895, to New York?—A. No, sir; I hadn't anything to do with that.

Q. You don't know whether the Cincinnati office has them or not?—A. I couldn't tell you anything about it, sir.

Q. Prior to 1895, you had such statements as we have called for, didn't you?—A. No, sir.

Q. You had records from which those could be made?—A. We didn't make up any such records as this [referring to the subpœna]. I didn't, anyway.

14040 Q. But you had the reports from which that could be made?—A. From one month to another.

Q. They were sent to the office in Cincinnati, weren't they?—A. Yes, sir.

Q. Was that the office that you reported to?—A. Yes, sir.

Q. You do keep such records as that now, don't you?—A. We simply keep the cost and selling price sheets, and the gallonage, for each month compared with the month previous. That is all I have in my department; I have nothing else.

14041 HENRY M. TILFORD, recalled in behalf of petitioner, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Tilford, you were subpœnaed to produce all books, records, papers, and reports in your possession or under your control showing or tending to show the quantity of the several grades of illuminating oil and naphtha sold by each of the several marketing companies or departments controlled by the Standard Oil Company or the trustees of the Standard Oil Trust with which you are or have been connected, to wit, among others, the Continental Oil Company, the Standard Oil Company of Iowa, and the Waters-Pierce Oil Company, and showing the amount of net earnings thereon and of the net earnings per barrel or gallon on each of said quantities for each of the years from 1886 to 1894, both inclusive. Have you such records?—A. No, sir.

Q. Petitioner's exhibit 314, furnished by the defendants at the request of the Government, states that information for the year 1907, does it not [showing the exhibit to the witness]?—A. The first six months of 1907.

Q. Then your company does now keep such records?—A. I assume they do; yes, sir.

Q. Have you any papers or records of any of these companies with which you have been connected, selling goods, showing that information prior to 1895?—A. No, sir.

Q. At the time of the sales you had reports, monthly, or at other stated periods, from which that information could be computed, did you not?—A. Yes, sir.

Q. What did you do with those statements?—A. I looked them over. I furnished the information as to the statistics to
14042 the S. O. Company of New Jersey, and then I had no further use for them.

Q. What has become of those statistics? Where are they?—A. I don't know.

Q. In what office are they?—A. I don't know.

Q. They were, at the time, furnished to the Standard Oil Company of New Jersey?—A. I furnished some of them; yes, sir.

Q. For how many years prior to 1895?—A. I don't remember how many years.

Q. From 1886 down?—A. I had nothing to do with those companies you mention in 1886.

Q. When did you commence with those companies?—A. In 1887.

Q. Well, from 1887 down, then?—A. I commenced with the S. O. Company of Iowa and the Continental Oil Company in 1887.

Q. Well, those two companies?—A. Yes, sir.

Q. You had such information at that time, and furnished it to the Standard of New Jersey?—A. I can't remember now whether I furnished it to them at that early date, or not; I don't remember.

Q. I understood you a few moments ago to say that the information was sent to the Standard Oil Company of New Jersey, and you didn't preserve it any more?—A. I did, until some period about 1890, along there; I can't say the exact period.

Q. You are at present at 26 Broadway, connected with the Standard?—A. With the Standard Oil Company of California.

Q. Now, in what office are those statements preserved, if at all?—A. I don't know, sir.

Q. Mr. Dredger testified, as I understood him, that they
14043 were not preserved in his office. Do you know of any office that they would be preserved in?—A. No, sir; I do not.

Q. Have you any information in your office that would show the selling prices of oil to the retailer in the various communities where these companies were doing business, prior to 1895?—A. No, sir.

Q. If that information exists, it is in the Standard of New Jersey?—A. I haven't the information.

Q. You were marketing in 1886 and 1887, down to 1895, in the same manner that you are marketing now, were you not?—A. Practically in the same manner, from 1887.

Q. Well, from 1887? You were keeping the same statistics, practically, that you keep now, were you not?—A. In a general way I should assume that they were keeping them.

Q. And was Mr. Dredger's office, the statistical office, in existence at that time?—A. I don't remember when it was started.

14044 WILLIAM R. KING, recalled in behalf of petitioner, testified as follows:

By Mr. KELLOGG:

Q. You had a subpœna served on you, Mr. King, to produce certain records, books, and papers?—A. Yes.

Q. Have you got the subpœna with you?—A. I have a copy of it.

Q. I will read that part of it, so I will not have to put in the whole subpœna. Have you any books, records, papers, or reports in your possession or under your control, showing or tending to show the quantity of the several grades of illuminating oil and naphtha sold by each of the several marketing companies or departments controlled by the Standard Oil Company or the trustees of the Standard Oil Trust, with which you are or have been connected, to wit, among others, the Standard Oil Company of New York, and showing the amount of the net earnings thereon, and of the net earnings per barrel or gallon on each of said quantities for each of the years from 1886 to 1894, both inclusive?—A. No, sir.

Q. You keep such records now, do you? Prior to 1895 did you have reports from which such information could be compiled?—A. No, sir.

Q. Did you have any reports of the sales in each station?—A. No, sir.

Q. Were you connected with the Standard Oil Company of New York at that time?—A. Yes, sir.

Q. Didn't you keep the quantity——

Mr. ROSENTHAL. He speaks of his personal capacity.

Q. Did the company keep them?—A. I suppose they did;

14045 I don't know that.

Q. Who had charge of the Standard Oil Company of New York prior to 1895?—A. I think a gentleman named Hutchins. He retired many years ago.

Q. Prior to 1895 were you familiar with the way business was done?—A. Somewhat.

Q. Were reports made from each station showing the quantity sold and the price received?—A. I couldn't tell you.

Q. You have no such records in your office now?—A. No, sir.

Q. Do you know whether any department of the Standard Oil have any papers showing that?—A. I do not.

14046 WALTER P. CUTLER, recalled in behalf of petitioner, testified as follows:

By Mr. KELLOGG:

Q. With what company are you connected, Mr. Cutler?—A. With the Atlantic Refining Company.

Q. How long have you been?—A. Since 1897.

Q. You were not connected with the Atlantic Refining Company in 1884?—A. No, sir.

Q. Who was the general sales agent of that company at that time?—A. I have no idea, sir.

Q. Have you in your company any books, records, papers, and reports showing the quantity of the several grades of illuminating oil and naphtha sold by each of the several marketing companies or departments controlled by the Standard Oil Company or the trustees of the Standard Oil Trust with which you are or have been connected?—A. I have not.

Q. Has the Atlantic Refining Company any papers showing the amount of net earnings on the oil sold, the net earnings per barrel, between 1886 and 1894?—A. I do not know.

Q. Are you in charge of their papers now?—A. No, sir; I am in charge of their sales.

Q. You had charge of the office of the Atlantic Refining Company?—A. Yes, sir.

Q. Have charge of all reports of sales, haven't you?—A. Yes.

Q. You keep such records now?—A. Well, we have reports made now; yes.

Q. You were subpœnaed to produce them, were you not?—

14047 A. I produced them.

Q. What?—A. I did produce them. I testified before.

Q. Yes—you produced them for the later years?—A. Yes.

Q. But you have none to produce prior to 1895?—A. No, sir.

14048 W. F. MESSNER, sworn in behalf of petitioner in rebuttal, testified as follows:

By Mr. KELLOGG:

Q. Mr. Messner, what is your full name and residence?—A. William F. Messner; Warren, Pennsylvania.

Q. Are you in the oil business?—A. Yes, sir.

Q. With what company?—A. The Cornplanter Refining Company.

Q. Have you a refinery at Warren, Pennsylvania?—A. Yes, sir.

Q. How long have you been in that business?—A. 20 years.

Q. Does your company own a pipe line?—A. Yes, sir.

Q. A small line, is it?—A. Yes, sir.

Q. What is the length and size of it?—A. A 2-inch line. I should think the main line was 20 miles, perhaps.

Q. What size?—A. 2 inch.

Q. The main line is to deliver oil to your refinery?—A. Yes, sir.

Q. From what territory?—A. What we call over there the Tiona field.

Q. Do you transport more than one grade of oil through that pipe line?—A. Two grades.

Q. What are the grades?—A. They were called the Tiona, and then the Pennsylvania. At the present time it is all under one head—Pennsylvania oil.

Q. Do you keep them separate?—A. Yes, sir.

Q. What is the difference between the two grades?—A. Mostly in the color.

Q. Why do you keep them separate, then?—A. In the man-
14049 ufacture of certain kinds of goods it is easier to make out of one kind than it is the other.

Q. So you transport, then, in separate batches, do you?—A. Yes, sir.

Q. Do you transport those through the same pipe?—A. Yes, sir.

Q. In what quantities?—A. Three to five hundred barrels.

Q. One following the other through the same pipe?—A. Yes, sir.

Q. Do they mix any?—A. Not perceptibly.

Q. How do you arrange it when you want to cut out one kind of oil and run the other?—A. If we were pumping five hundred or a thousand barrels of light oil and were following with the darker oil, the man at the pump station would notify us when he changed it. We, knowing how many barrels there are in the line and how long it takes to pump the amount that is in the line—to clear it—can tell pretty near when the dark-colored oil should arrive, and we have a man at the tank who watches it, and, as soon as it changes color, he turns it into the other tank.

Q. Does it change very quickly or not?—A. Yes; the difference between the color you could see at once.

Q. Is the mixture of a sufficient quantity to be of any detriment as a commercial proposition?

Mr. CRAWFORD. I object to that as calling for a conclusion of the witness. Ask him what the mixture is.

A. No, sir.

Q. Do you also purchase oil or receive oil from the Standard's pipe line?—A. We purchase oil from the Standard's pipe line.

Q. Delivered where?—A. Delivered at our refinery.

14050 Q. More than one grade?—A. Two grades.

Q. State whether they are kept separate or not.—A. Whether we keep them separate?

Q. Yes.—A. Yes, sir.

Q. Are they delivered to you through the same pipe?—A. Yes, sir.

Q. In what quantities do they deliver you such oil?—A. They don't like to make a delivery of less than 500 barrels, from five hundred to a thousand barrels.

Q. Well, do they deliver in those quantities?—A. Yes, sir.

Q. Does one grade of oil follow another?—A. Yes, sir.

Q. Do you receive those in the same way you do your own?—A. Yes, sir.

Q. How far do they transport that, do you know?—A. No, sir.

Q. Can you tell what Territory it comes from—some of it?—A. Presumably from the same place that we get ours; out in that direction.

Q. Well, do you get any from any other part of Pennsylvania?—A. No, sir.

Q. Or West Virginia?—A. Well, as I understand, the darker grade of Pennsylvania oil now comprises the oil produced in southeastern Ohio and parts of Virginia.

Q. West Virginia?—A. West Virginia.

Q. Do you know the United States Pipe Line?—A. Yes, sir.

Q. That line runs from western Pennsylvania to the seaboard at Philadelphia?—A. Yes, sir.

Q. Do you, among others, transport any oil through those lines?—A. Yes, sir.

14051 Q. Refined or crude?—A. Refined oil.

Q. They have a line through which they transport refined oil?—A. Yes, sir.

Q. Do they transport oil for other people besides yourself?—A. All of the refiners in Warren, I think, contribute, or nearly all.

Q. How many grades of refined oil do you transport through the same pipe?—A. Two.

Q. What are the two grades?—A. What we call export oil—oil that has a yellowish cast; and what we call water-white oil—150 test.

Q. Which is the superior oil?—A. The water white, 150, is the superior oil.

Q. How much more is the water white worth than what you call the export?—A. About a cent and a half now.

Q. Per gallon?—A. Yes, sir.

Q. Do they transport those different grades of oil in batches through the same line, one following the other?—A. Yes, sir.

Q. In what quantities do they do it?

Mr. CRAWFORD. Does he know?

Q. If you know.

Mr. CRAWFORD. Don't tell what other people have told you.

Mr. KELLOGG. No.

WITNESS. I know this: We would get a letter saying that on such a date——

Mr. ROSENTHAL. I object to what you get in letters.

Q. State what quantities are sent through.

Mr. CRAWFORD. The question is, if you know.

14052 Mr. KELLOGG. Yes.

WITNESS. Why, I know in a way; yes.

Q. How do you know?—A. I know that there is——

Mr. ROSENTHAL. The question is, how do you know.

WITNESS. I am going to tell how I know, if you will wait a minute.

Mr. ROSENTHAL. Well, now, that is the question.

WITNESS. I know that a boat is to be loaded with 25,000 barrels of Water White oil, and that the refiners must supply it.

Q. What do you know when you get notice of that?—A. We get our oil ready to put into the line, and, when the gauger comes, we put it in.

Q. How much do you put in and transport, say, at one time?—A. Our proportion that we have to supply would be between twenty-five hundred and three thousand barrels.

Q. How much would the others supply?—A. I don't know. I simply know what we supply. But it is proportioned according to the crude that we have—our capacity.

Q. You know how much is transported through that line in a batch, don't you?—A. From twenty-five to fifty thousand barrels.

Q. At a time?—A. Yes, sir.

Q. Then followed by——A. By the export oil again—push that out.

Q. In other words, you transport a batch of, say, 25,000 barrels of Water White, and follow it with an equal amount——A. —— or more——

14053 Q. ——or greater, of export oil?—A. Of the export oil, yes, sir.

Q. Does it mix?

Mr. CRAWFORD. Does he know?

Mr. KELLOGG. Yes, sir; he knows.

Mr. CRAWFORD. If he knows.

WITNESS. I know it does not.

Q. How many years have you been doing that?—A. I don't know; quite a good many years.

Q. Who are the men in charge of the United States Pipe Line?—A. The man who has charge of our section is Mr. Quigley, who has to pass on the oil before it is allowed to go into the line.

Q. Who is the general superintendent of the United States Pipe Line? Do you remember his name?—A. Well, all of the refiners, in Warren, Oil City, and Titusville have to be governed by what Mr. Quigley says as to when we can pump and whether the oil is in condition to pump.

Q. Where is his office?—A. In Oil City.

Q. You know Mr. Tarbell—W. W.?—A. Yes, sir.

Q. He has general charge of the United States Pipe Line, hasn't he?—A. He has general charge of the Pure Oil Company. I don't know just how they divide up the work.

Q. Do you know just how many refineries there are in and about western Pennsylvania that patronage the United States Pipe Line in the transportation of refined oil?—A. I should think a dozen; perhaps more than that.

Q. Can you name some of them?—A. In Warren there is

14054 the Seneca Oil Works, the Warren Refining Company, the

Cornplanter Refining Company; at a little town outside of our town, North Clarendon, Levi Smith; and I think the Union Petroleum Company contribute now; at least they put their oil in and transport it and take it again at Philadelphia, and all of the refiners, I think every one, at Oil City.

Q. Name them, can you?—A. The Germania, the Continental, Confer, Crystal. I don't know as I can think of another one now. And I think one or two in Titusville.

Q. Do you know what ones they are?—A. I think Westgate calls himself the American; and Mr. Tackey's refinery—I can't think of its name now.

Q. Your Water White oil you don't sell for export, do you?—A. Yes; this Water White oil that we pump into the line goes for export.

Q. But it is not the kind of oil that you call export oil?—A. No; it is not what we call export oil; this generally goes to England, although they are using some in Germany now.

Q. Have you had any experince in refining Mid-Continent crude oil?—A. Yes, sir.

Q. How did you get the oil and what experience have you had?—A. We sent some of our tank cars out to Indian Territory—it was at that time—and had them loaded, brought them to Warren, and experimented with it.

Q. Did you do it regularly or only for experimental purposes?—A. We had an option on buying a large piece of property out there—getting leases—and before we bought it we wanted to see what we could make of the crude.

14055 Mr. ROSENTHAL. Where was that?

Mr. KELLOGG. At Oklahoma.

WITNESS. We got some oil from Oklahoma.

Q. You brought the oil to Warren and used it in your Cornplanter Refinery?—A. Yes, sir.

Q. What kind of oil was that?—A. About 34 to 36 gravity.

Q. It came from Oklahoma?—A. Yes, sir.

Q. How far from the Glenn pool?—A. Our lease is what we called the Big Lease, and it is northeast—directly east of Bartlesville; that is the largest town near it.

Q. Are you familiar with the various grades in Oklahoma?—A. Only that I know they are of different gravities.

Mr. CRAWFORD. Have you ever been there?

WITNESS. Yes, sir.

Q. How much did you refine to demonstrate the value of the oil?

Mr. CRAWFORD. We object to that. That is a matter of inference.

A. How much we refined?

Q. Yes.—A. I should say 500 barrels.

Q. Was that a sufficient quantity to demonstrate the value of the oil?—A. We put it in a small still, holding a hundred barrels, so that we could make more than one demonstration.

Q. Was that a sufficient quantity to demonstrate?—A. Yes, sir.

Q. Comparing that oil with Illinois oil, is it or is it not as good as Illinois? Please state generally.

Mr. ROSENTHAL. I object to that. It does not appear, as yet, that he has any knowledge of Illinois oil, or ever insti-
14056 tuted any such comparison.

Q. Have you had any experience with Illinois oil?—A. Yes, sir.

Q. What experience?—A. We refine about 6,000 barrels of it every month, and have for over a year.

Q. Comparing the Oklahoma oil with the Illinois oil, which is the best?—A. That would depend some, sir, on what you were trying to make.

Q. Explain.—A. There are two ways of refining oil—what we call the tar distillation and the wet distillation. We at the Cornplanter have only the wet distillation; that is, we make cylinder stocks; and if we put the Oklahoma crude through a certain process we could get better results than we do from anything that we have discovered so far in the Illinois—more profitable results.

Q. Generally speaking, between the Oklahoma oil and the Illinois oil, which do you think is commercially the more valuable?—A. Do you mean for us, the Cornplanter Refining Company?

Q. Yes; or for any refining company.—A. I would rather have the Oklahoma crude. Of course that might all change, with the difference of price. Price, of course, enters into that.

Q. Well, I am speaking of the same price.—A. Oh, at the same price?

Q. Yes.—A. I would prefer the Indian Territory.

Q. As to the quality of the oil, is it a better oil than the Illinois or not?—A. Yes, sir; it is better.

Mr. ROSENTHAL. That is, for your purposes.

WITNESS. Yes, sir.

Q. Do you think it is, for all refining purposes, better than
14057 the Illinois oil, or not?—A. On the dry distillation I don't know the percentages. We figure percentages, and the price enters into it very largely, to know which is the most profitable.

Q. Well, taking it at the same price.—A. If you could make 30 per cent of Water White oil out of one kind and only 20 out of the other, everything else being equal, then the one that made the 30 per cent would be the best oil for the refiner to buy.

Q. Well, which is the best, the Oklahoma or the Illinois?—A. As I said before, I prefer the Oklahoma.

Q. Do you know as to the Lima-Indiana oil?—A. No, sir.

Q. You are not familiar with that?—A. No, sir.

Q. How about Pennsylvania? What is the price of Pennsylvania crude?—A. It costs us at the refinery $1.98 for 42 gallons.

Q. That includes 20 cents pipage?—A. Yes, sir.

Q. That is the total cost at the refinery?—A. Yes, sir.

Q. What is the price of Oklahoma? 41 cents?—A. 41 cents down.

Q. That is, at the wells?—A. Yes; it depends on the gravity. Anywhere from there to 28 cents.

Q. You have shipped some by freight, have you, from Oklahoma to Warren?—A. Yes, sir.

Q. Do you remember what the freight was?

Mr. ROSENTHAL. We object to this as not being rebuttal testimony.

Mr. KELLOGG. This is simply for the purpose of comparison of values; that is all.

Mr. ROSENTHAL. It seems to me that that is not rebuttal.

Mr. KELLOGG. You offered testimony as to comparative values.

Mr. CRAWFORD. Do you mean the Illinois and—

Mr. KELLOGG. The Illinois, Oklahoma, Lima-Indiana, and
14058 Pennsylvania.

Q. Do you remember what the freight rate was, or what it cost you laid down?—A. I think it was about $1.50 a barrel.

Q. The two oils cost you about the same price?

Mr. ROSENTHAL. Do you mean the freight rate alone, $1.50 a barrel, or what it cost you laid down?

WITNESS. No; that was the freight. As I remember, it costs us about as much as Pennsylvania oil. Of course we only got a little of it, so we didn't care about the freight.

Q. What is the comparative value of the two oils, do you know? Not taking into consideration the price you have to pay, but what is the comparative value commercially of the two oils?—A. My experience may be different from other people's, and I can only give you my opinion. The oil that we had to experiment with contained asphaltum. After the elimination of that asphaltum the Indian Territory oil was just as good as the Pennsylvania.

Q. Have you made any calculation to show the comparative value of the two oils—not taking into account any question of what it costs you, but the comparative value of the two oils for refining purposes?—A. I can't answer that any better than I just did, that after the elimination of that 15 per cent, which would simply make your 85 per cent cost that much more, it is then just as good as the Pennsylvania.

Q. That is, assuming that the asphaltum base of 15 per cent is all thrown away?—A. Yes, sir; if you lost all of it.

Q. Is the asphaltum base a total loss to you?—A. No, sir.

Q. Then, you have not made any accurate computation to ascertain the comparative values of the two oils for refining purposes,
14059 taking into account the value of the asphaltum?—A. We know that we can make pitch out of that asphaltum. We know what the pitch brings. We know that it brings more than the cost of crude and the cost of making it; it simply means putting up additional construction and going into a side line. But we are satisfied enough so that we are building a big refinery in Texas City—spending our money.

Mr. ROSENTHAL. Limiting your scope?

WITNESS. Doing what?

Mr. ROSENTHAL. Limiting the scope of refined oil?

WITNESS. I don't know what you mean by that.

Mr. ROSENTHAL. Well, go ahead.

Q. Taking all the products you get out of the two oils, can you tell us what the comparative value of the two oils is?—A. I think I have answered that once before—that if you eliminate that 15 per cent your 85 per cent is just as good in quality and can produce the same percentages of the different goods as we make out of the Pennsylvania. We get the same thing, if not better, out of the Oklahoma.

Q. The asphaltum, you say, can be used at a profit?—A. Yes, sir.

Q. Have you made a general examination of the grades of oil in Oklahoma and Kansas?—A. No, sir.

Cross-examination by Mr. CRAWFORD:

Q. Where do you live, Mr. Messner?—A. At Warren, Pennsylvania.

Q. What is your position with the Cornplanter Company?—A. One of the stockholders and one of the officers.

Q. What office do you hold?—A. Secretary.

14060 Q. How long have you been connected with it?—A. 20 years.

Q. What positions have you held with it in that 20 years?—A. Well, we were very small when we commenced, and I was everything; I did anything that came along. But I have always been secretary, in an official capacity. For 8 years I was what you might call superintendent; I had to do with the manufacturing of the goods, running the refinery we called it. I had nothing to do with the sales or the cash.

Q. What were the 8 years that you speak of?—A. The first 8 years. Then we got large enough——

Q. What years were they?—A. We commenced in November, 1888.

Q. That would be down to 1896?—A. Yes, sir.

Q. And then?—A. I stayed there just the same, right along, after that, except we had grown larger and we had a foreman. I had my eye on the business all the time just the same.

Q. What have been your duties since 1896?—A. I have been at the office nearly every day. The Cornplanter Refining Company was organized by three of us young fellows. We conferred with each other. Mr. Todd sold the goods, Mr. Allen kept track of the office end, and I kept track of the manufacturing end, and we would confer with each other.

Q. You are speaking now of what time?—A. All the time until the last two years.

Q. What have you had to do with manufacturing or refining during any of these years?—A. General supervision of it.

Q. Are you an engineer by profession?—A. Do you mean a refiner?

Q. No; I mean what I say. Are you an engineer by profession?—A. No, sir.

14061 Q. Are you a practical refiner?—A. Yes, sir.

Q. Do you run the stills?—A. I can.

Q. Have you done so?—A. Yes, sir.

Q. Where is this pipe line of the Cornplanters that you speak of? It runs from the refinery where, or runs from where to the refinery?—A. It runs from the refinery to a town called Stoneham, and North Clarendon, down to Sheffield, Seabrook—all little villages.

Q. The main line is about 20 miles long, you said?—A. I should say about 20 miles?

Q. And it is a single pipe of 2 inches, is it?—A. Yes, sir.

Q. The two kinds of oil which you say you receive are both included under what is known as Pennsylvania grades, are they not, now?—A. They are now; yes, sir. It is only within the last year or so that they have been.

Q. What are their gravities?—A. Between 40 and 45.

Q. Can't you tell any more accurately than that?—A. Yes, sir.

Q. Aren't they both about 44 on the average?—A. It all depends on how fresh the oil is.

Q. If it is fresh——A. Years ago it was always 45. As the wells have gotten older, it has gone down. We have had some in there as low as 42.

Q. When it is freshly pumped it is nearer 44, isn't it?—A. I should say it would average maybe 43.

Q. The gravity of both kinds, if there are two kinds, is about the same, isn't it?—A. I should think so; yes, sir.

Q. There is no practical difference in the gravity?—A. Not in the gravity.

14062 Q. There is no practical difference in viscosity, is there?—A. I shouldn't think there was, in crude.

Q. There is no substantial chemical difference between the two, is there?—A. I should think not, unless a chemical makes the color. I don't know about that.

Q. And both command the same price, or cost the same money, don't they?—A. They do now. Years ago there was always a premium on the lighter-colored oils.

Q. Well, they have for several years?—A. I think it is within two years.

Q. Well, within two years they have both been sold for the same money?—A. Yes, sir.

Q. And you pay the same for them?—A. Yes, sir.

Q. And the only difference whatever in them is a slight difference in color?—A. Quite a marked difference.

Q. A greater or less difference in color?—A. Yes, sir.

Q. Those oils come a distance of 20 miles through this small pipe line. Who has charge of the practical operation of that pipe line?—A. It is run from what we call our head office, at the works.

Q. Yes; but the head office is not the "practical" man in charge of it. Who is the practical man in charge of it?—A. Our Mr. Allen, who is the president now, was originally the builder of the line, be-

fore we bought it; and if anything goes wrong along the pipe line we have what we call a regular gauger—two gaugers or three gaugers—and they go out and gather the oil from the producers into a large tank, and then when we get ready at the refinery for some of
14063 that oil one of those gaugers goes out and pumps it down to us—we call it pumping it down—through that line.

Q. When it is received at the refinery, who has charge of the reception of it there?—A. Our present superintendent would be notified that they were going to pump, and what kind of oil they were going to pump.

Q. How would he be notified?—A. Either verbally or by hanging an order on his hook.

Q. I ask you who receives it when the oil comes to the refinery?—A. I would say the assistant superintendent.

Q. Is there any person whose business it is systematically to receive it?—A. Yes, sir; it is his business to see. If we are pumping two kinds of crude we gauge that crude every hour to see that our pipe is all right——

Q. What do you mean by gauging it?—A. Go to the tank, see how much we have received, call up the man who is pumping at the other end of the line, and see how much he has pumped, so as to know that there is no break in the line.

Q. And when a cut is made, who makes the cut?—A. The man who is at this end and watching the gauge.

Q. Have you ever made it yourself?—A. Yes, sir.

Q. Do you customarily make it?—A. No, sir.

Q. You have only done it once in a while, I suppose?—A. I have stood at the tank and watched it change color and turned it over to the other tank.

Q. The change is made entirely from the look of the oil, from the color, is it?—A. Yes, sir.

Q. Does any one take the gravities of the oil as it comes
14064 in?—A. No, sir.

Q. Then you don't know whether there is any difference in the gravity as it comes in, or not; no gravities are taken. It is a question of judgment, I suppose, somewhat, for the foreman who is watching it to tell where to make the cut on the change in the color?—A. We have to depend on the man entirely.

Q. That is, the color blends off from the dark into the light, I suppose?—A. No; I don't think it blends much. It is remarkable how clear cut it is; it is surprising. It is not a gradual change.

Q. What are the two kinds of oil that you are speaking of now? What are their trade names or field names? I mean other than Pennsylvania grade, what are the special names of them?—A. Until the recent change, when they put it all on the same price basis, we always spoke of the lighter one as the Tiona.

Q. And the other one as what?—A. We used to say M. D., which meant "Middle Division," and they changed that again and called it Pennsylvania, and now they call it all Pennsylvania.

Q. How much difference is there in the color?—A. If you had it in a bottle on the window so you could see through it, one would be of an orange color and the other a dark red, wine color, ruby. If you look at them the other way, with the light looking at them instead of through, one would be yellowish and the other green.

Q. What is the capacity in barrels of your main line—20 miles?—A. It will hold about 20 barrels to the mile.

Q. About 400 barrels altogether?—A. About 400 barrels all together? I know a 2-inch pipe holds 20 barrels to the mile.

14065 Q. Its total capacity is about 400 barrels?—A. Yes, sir.

Q. How far is your refinery from the nearest point of the pipe line of the United States Pipe Line Company?—A. Half a mile.

Q. The United States Pipe Line Company has two pipes, has it not; one for crude and one for refined?—A. Yes, sir.

Q. And that constitutes their entire system, does it not, from terminus to terminus?—A. Yes, sir.

Q. It has a single pipe of about what diameter for crude? 6 inches, is it?—A. I don't know whether it is 6 or 5.

Q. What is the size of the pipe for refined?—A. I think that is a 5 inch line.

Q. One single pipe 5 inches in diameter for the refined and one either 5 or 6 inches in diameter for the crude that they pump; that is correct, is it?

(No response.)

Q. No use is made for your concern of the crude pipe?—A. No, sir.

Q. And you are not testifying here in regard to the pipe of the United States Pipe Line Company used for crude transportation, as I understand?—A. No, sir.

Q. That you don't know anything about?—A. I don't know anything about that.

Q. All you are testifying about here is the pipe which is used by the United States Pipe Line for refined oil?—A. Yes, sir.

Q. Have you ever had anything to do with managing that pipe line?—A. The United States Pipe Line?

Q. Yes.—A. No, sir.

14066 Q. You are not connected in any way with the United States Pipe Line, except as——A. A stockholder.

Q. ——a customer, a consignor, something of that kind?—A. The relationship might have been a little more close than that, from the fact that the United States Pipe Line in its origin and conception was to relieve the independent refineries, and we were interested as stockholders, and we were also interested because we were obliged to furnish the oil for it. So, of course, we were interested in——

Q. Never mind the matter of your stock connection. You have no connection with the business management?—A. No, sir.

Q. Neither with the business management of the company nor with the physical management of its pipe lines?—A. No, sir.

Q. And you never have had, have you?—A. No, sir.

Q. Have you ever been present at any point where you could observe the physical operation of the pipe line?—A. I have seen the oil coming out of the end of it.

Q. But you have not been present at the initial pump station and seen the oil put in and watched the operations there, have you?—A. I have been at the one at Warren; yes, sir.

Q. That is a substation, is it not?—A. It is a relay station. It is just the same as an initial station. The oil discharges into one tank and is pumped out of the other.

Q. You had no knowledge of what was in the pipe at the time your oil went in, I suppose?—A. I couldn't see the inside of the pipe.

Q. Well, you had none, had you, except what you were
14067 told?—A. No, sir.

Q. And you don't know what followed your oil, except what you were told, do you?—A. I know that our export oil followed the Water-White oil, because we pumped it into the line.

Q. Which did you pump into the line?—A. We pumped both.

Q. First you pumped in some Water White and then some export, did you?—A. Yes, sir.

Mr. ROSENTHAL. That may be a reason why the competitors' European trade has not been built up.

Q. You have not followed those shipments of Water White or Standard-White oil to the seaboard—followed them along the line and traced the conditions in the pipe, have you, at all?—A. No, sir.

Q. You don't know whether you received the same Water White oil which you put into the pipe, or the same Standard White oil that you put into the pipe, at the end or not, do you?—A. Whom do you mean by "you?"

Q. I mean you as an officer of the Cornplanter's.—A. We sell it to the Pure Oil Company.

Q. Oh, you sell it?—A. Yes, sir.

Q. Then you deliver this to the United States Pipe Line, and sell it to them at the point of delivery?—A. We have done that, and we have——

Q. No, no. Do you?—A. We do that; yes, sir.

Q. And you always have done that, so far as your transaction in refined oil with the United States Pipe Line Company is concerned?—A. No; there has been a time when we sold to the Union Petroleum Company and delivered to the United States Pipe
14068 Line, and they delivered it to the Union Petroleum Company at Philadelphia.

Q. For how many years have you sold to them directly?—A. To the United States Pipe Line?

Q. Yes.—A. More or less ever since the pipes were put in.

Q. That is how long?—A. I couldn't tell you that.

Q. Do you mean ever since the United States Pipe Line was put in?—A. Yes.

Q. For several years you have done that entirely, haven't you?—A. Sold to the United States Pipe Line?

Q. Yes.—A. I just said that with the exception of selling to the Union Petroleum Company. We have sold the Union Petroleum Company within a year.

Q. That is an occasional transaction, isn't it?—A. Yes, sir.

Q. But you don't know what the Union Petroleum Company gets at the other end, except——A. No, sir.

Q. You are never present there to see what they get, are you?—A. I know that if they didn't get it they wouldn't pay us for it.

Q. Well, you are never there to see what they get?—A. No, sir.

Q. And you don't know whether they get the identical oil that you pump into the line, or some other?—A. No; I couldn't swear to that.

Q. There is no such thing as paraffine in refined oil, is there? At any rate, if it is there, it is there to an inappreciable extent?—A. Yes.

14069 Q. There is no such thing as a deposit of paraffine from refined oil, upon the surface of a pipe, is there?—A. In very cold weather the export oil will congeal to a certain extent, and that is due to paraffine, as I understand it. The word "paraffine" covers a multitude of sins. They speak of paraffine in all kinds of ways. But that waxy substance in the export oil—because it is, as we call it, farther down in the distillation—some of that goes over in the distillation, and there is some paraffine in the export oil. There is a less amount of it under a chemical test. We speak now of the "viscosity" of burning oil, which is a new thing; we did not do that years ago, and I would say, generally speaking, that there is no paraffine in the Water White. There is in the export.

Q. But it is a very small amount, isn't it—a very small percentage?—A. There is enough of it on a cold winter morning to congeal in a bottle.

Q. Will it form a permanent deposit?—A. It is not a deposit. It melts again under heat.

Q. It melts again just as soon as the weather warms up, doesn't it?—A. Yes. But that, I should say, is, technically speaking, paraffine in the oil.

Q. But it is not a permanent deposit? It is not something that separates and then passes on? It is a partial congealing of the oil itself, isn't it?—A. Yes; makes it slushy.

Q. And as soon as the weather is warm that melts off?—A. But you asked me if there was any paraffine in it.

14070 Q. My question may have been vague. I am not a practical man. You must excuse me. I am blindly groping to get information from you gentlemen. Just as soon as the weather warms up again that melts off and leaves the pipe clean?

(No response.)

Q. Now, as far as gravity is concerned, is there any difference in the gravity between Standard White and Water White?—A. Yes.

Q. How much?—A. Two and a half degrees. From one and a half to two and a half degrees.

Q. In gravity?—A. Yes, sir.

Q. Now, your only reason for stating that there is no mixture between the Water White and the Standard White oil in that pipe line is that the amounts of refined oil which you have from time to time sold to the Union Petroleum Company have been paid for, isn't it? You have no personal knowledge other than that—and what you have been told, of course?—A. Well, I deduce certain things from the fact that I know they would not pay us for 3,000 barrels of oil if part of it was not Water White.

Q. Well, you have no personal knowledge? You never have been at the other end to receive the oil, have you?—A. Do you mean when it is changed?

Q. Yes; you never have made any personal observation at the terminus, at the seaboard terminus of the United States Pipe Line, to see in what shape that oil comes out, have you?—A. I have only seen the export oil coming out at the end of the line at the seaboard. I have never seen the Water White.

Q. Have you ever been present at the pipe when a cut was made?—A. No, sir; I never was present. All I know is what I have
14071 been told.

Q. How much mixture have you found takes place on that 20-mile pipe between these two oils? You said there was not enough to be a commercial proposition. Have you any test by which you can state definitely how much there is?—A. Why, it is really nothing, sir, in a 2-inch pipe, or in a 3-inch pipe, from the fact that we have purchased, we will say, a thousand barrels of Tiona oil and a thousand barrels of M. D. oil from the S. O. Company, and they delivered both in one day, and they pumped first the light, perhaps, and, when the thousand barrels is nearly all there, the Standard Oil Company's gauger will go to the telephone and call up the pump station and say, "Turn on the other oil," and he will go out to the tank and watch it, and when it changes color he turns it into the other tank. And we used to pay them 15 cents more then. If there was any of the light oil going into the cheaper pipes they would stop it mighty quick.

Q. Those two oils came from the same fields you spoke of before—the Tiona and the M. D.?—A. Yes, sir.

Q. And came about the same distance?—A. I don't know where theirs comes from.

Q. Well, they must come from about the same distance if they came from the same fields?—A. Well, that light oil; yes; we know there is only one Tiona field, and that must come from there. But the M. D., as we used to speak of it, they would bring from Virginia if they wanted to; I don't know.

Q. Well, the light oil is carried, then, about 20 miles, as I understand?—A. Not over that.

14072 Q. And you have noticed it when preceded by dark oil and followed by dark oil, I suppose?—A. Yes.

Q. The oil when received is put into first one tank and then into another tank—the dark into one tank and the lighter into another tank. Now, how do you know that you get exactly the amount of one kind of oil? How do you determine how much you get of one kind or the other?—A. Our tanks are all gauged.

Q. How large are those tanks?—A. Our tanks at the refinery are not very large; they hold, perhaps, ten to fifteen barrels to the inch. These tanks are gauged by the Standard Oil Company gauger. When they commence to deliver crude they lock the stop, take one of our men and go with him and take the gauge of the tank. When they have finished pumping or making the delivery, our man again goes with him and signs his sheet, and he signs our sheet.

Q. Have you ever done that gauging yourself, practically?—A. Yes, sir.

Q. Isn't it a fact that it is very difficult to get the exact capacity of any such tank? Are you not always liable to some error—an inch or so?—A. Oh, not an inch; no. They would kick on an inch.

Q. Well, there is a margin of error there, is there not?—A. We always get the worst of it from the fact that in pumping the oil there is more or less agitation in the air mixture. They take their gauge immediately after they get through, when the oil is all stirred up in the tank, and we always figure that we get about a quarter of an inch the worst of it whether it is light or dark oil. When
14037 the Standard Oil Company make a delivery, they pump through the 3-inch pipe, and they pump very fast. If they would wait an hour I think we would get the exact gauge. It shows very distinctly on a gauge rod. The gauge rod is painted. We have to be pretty accurate—the field men all learn that—because the producer will kick if you make an inch mistake on him.

Q. What is the yield of refined oil—the Pennsylvania grade oil, which you have been speaking about?—A. Do you mean the two kinds together?

Q. No; I mean what is commonly known as Pennsylvania grade crude.—A. Do you mean what is the percentage of export oil and water-white oil combined?

Q. Yes.—A. In the dry distillation it is more than in the wet. Do you mean just ours?

Q. Well, give me yours first.—A. 45 to 50 per cent burning oil.

Q. By other methods is not a very much larger amount of that producible—nearly 75 per cent?—A. If you run dry distillation, they make a larger percentage.

Q. Don't they make, under some circumstances, 75 per cent of refined oil?—A. 75 and 15 are 90. I should think they would. I have never had any experience in the dry distillation.

Q. Then you do not doubt that, under what you call dry distillation, upward of 75 per cent, or about 75 per cent, of refined oil, can be produced out of the Pennsylvania?

(No response.)

Q. Now, what is the largest amount of refined oil that can be produced from Kansas or Mid-Continent crude, so far as you
14074 know?—A. Well, if I am talking from what I know, I would have to answer you from the west distillation side.

Q. Well?—A. It would produce just as much.

Q. That is not the question. How much have you produced from the Mid-Continent crude? How much of a percentage in refined oil?—A. I have those figures all down, of our laboratory tests and other tests, but I cannot say except in a general way. I cannot tell you whether it is 46 per cent or 44 per cent. All I can say is that it is equal to the Pennsylvania.

Q. Won't you tell us again how much Mid-Continent crude you have ever run at the Cornplanter Refinery?—A. We have run a whole lot of it in a barrel still, and a barrel still will give you the same percentage——

Q. I didn't ask you that. How much have you run, altogether?—A. I think, 500 barrels.

Q. How many carloads is that?—A. Three.

Q. And did you do that all at one time?—A. No, sir.

Q. At different times?—A. Do you mean in one day?

Q. I mean all at one period.—A. Oh, we fooled along with it for a couple of months, until we made up our minds whether we wanted to buy the lease or not.

Q. But always on an experimental basis, wasn't it?—A. No; I would call a hundred-barrel still a commercial basis. That was sold.

Q. Well, you did this all, first, in an experimental way, did you not?—A. Well, I don't know whether it was in an experimental way or not.

Q. Didn't you refine it in a small still—what you call a
14075 one-barrel still—simply to find out whether you could use it profitably or not?—A. We did both. We did that, and we ran it in a large way, and the experiment was the same.

Q. Well, you have only done 500 barrels altogether?—A. That is just as good as a million.

Q. You have only done 500 barrels altogether?—A. Yes, sir.

Q. You didn't do that on a commercial basis, did you?—A. I don't know whether I would call it a commercial basis. We were satisfied——

Q. That is not the point. You didn't do it for the purpose of making products to sell?—A. That is certainly what we did do.

Q. Yes—you sold them afterward. But you did it for the purpose of finding out whether you could run the thing profitably or not, did you not?—A. Isn't that a commercial basis?

Q. No, sir; that is an experimental basis, as I mean it.—A. Well, I wouldn't think that.

Q. Now, never mind; let us not quarrel about words. Did you not run that thing simply to find out whether you could use Mid-Continent crude profitably or not?—A. That is what we ran it for, sure.

Q. And you just said, did you not, that you run 6,000 barrels per day of another kind of crude—Illinois, as I understood you?—A. Not per day; per month.

Q. Per month. That is 72,000 barrels a year. And how much Pennsylvania do you run?—A. 15,000 barrels a month.

Q. That is 180,000 barrels a year. And you have only run 500 barrels in all, of the other?

(No response.)

14076 Redirect examination by Mr. KELLOGG:

Q. After having tested this 500 barrels of oil, did you cease doing it because the oil was not satisfactory?—A. No, sir. We couldn't get it. We did that to decide whether we would put $500,000 in a piece of property out there and we put it in—on that "experiment," if you want to call it an experiment.

Q. Why haven't you used the oil?—A. We can't get it.

Q. Did you apply to the Standard to deliver it to you by pipe line?—A. When they issued their statement of what they would charge for transportation and the quantity that they would deliver——

Mr. CRAWFORD. I object to that as not responsive.

WITNESS. ——we could not ask them——

Q. What's that?—A. We couldn't ask them. We couldn't take 200,000 barrels at once.

Q. Did they name you a charge for transporting it?—A. Not directly to us. They were published in the paper.

Q. They do not have any published tariff from the Mid-Continent field, do they?—A. They issued some kind of a tariff as far as their Chicago and Illinois plant. We knew what the tariff was from there on.

Q. Do you remember the total amounts?—A. No, sir.

Q. Now, you say a barrel still is just as good as——A. Just as good as a thousand-barrel still.

Q. To demonstrate?—A. Yes, sir.

Q. And as I understood you, you made about the same percentage of illuminating oil out of the——A. Indian Territory as we

14077 did out of the Pennsylvania.

Q. You speak of Indian Territory. The Oklahoma oil?—A. Oklahoma; yes, sir.

Q. Using the same process, of course?—A. Yes, sir.

Q. The dry process, you say, would make about 75 per cent of illuminating oil from Pennsylvania oil?—A. All I know about the dry process is what I have heard the refiners tell who refined in that way. I know that they only make the three products or four. They make gasoline or naphtha, water-white oil, export oil, and a little tar or residuum that is left.

Q. By making the 45 or 50 per cent illuminating oil you get other products, do you not?—A. Yes.

Q. Which are just as valuable as though you made it all into illuminating oil?—A. More.

Q. More so?—A. Yes, sir.

Q. Is there any reason to believe that if your form of still or process of stilling would make the same amount of illuminating oil out of the Oklahoma as the Pennsylvania, that the other would not?

Mr. CRAWFORD. I object to any reason for believing; that calls for an opinion. If he knows anything about it let him state it.

Q. That is, if your still would make the same amount of illuminating oil out of Oklahoma——A. I would expect to get just as much. If I ran both the stills, first loaded with Pennsylvania crude and then with Oklahoma, and ran them the same way, I would expect to get the same percentage.

Q. By either form of still?—A. Yes, sir.

14078 Mr. CRAWFORD. I move to strike out the witness's answers, as involving the opinion of the witness.

Q. What is the difference in value between what you call the M. D. oil and the Pennsylvania oil? Fifteen cents, did you say?—A. There is no difference now.

Q. You said that you formerly paid them——A. Formerly we paid them 15 cents more for the Tiona.

Q. That is when they were delivering in different batches?—A. But they charge us a different price now.

Q. At the time you were paying them 15 cents more for one grade than another, were they then delivering it to you through the same pipe, one batch following the other?—A. Yes, sir. Both in one day, sometimes.

Q. How many times during the last year have you sold oil to the Union Petroleum?—A. Two or three times.

Q. In what quantities?—A. I couldn't tell you that.

Q. You can tell whether it was 1,000 or 20,000 barrels?—A. Well, I would say 2,500 to 3,000 barrels.

Q. Not exceeding 5,000 barrels?—A. No, sir.

Q. Now, has that actually been delivered to the Union Petroleum Company?—A. We got the money.

Q. What did they do with it?—A. They load it in vessels and export it.

Q. Have you any way of finding out what tariffs were published or statements of charges for transporting Mid-Continent oil by the Standard Oil?—A. All I know, sir, is that we had them in our office, looked them over, and saw that they were prohibited.

14079 Mr. CRAWFORD. I move to strike out the witness's answer as most improper, and as purporting to give the contents of written papers which are not produced or accounted for.

Q. Can you tell us what prices they were?—A. No, I can not.

Q. Have you got them yet? You don't know where they are?—A. No, sir.

Q. Can you tell the amounts of the transportation charges?—A. No, sir.

(An adjournment was here taken until the morning of Wednesday, January 13, 1909, at 10.30 o'clock.)

14080 ROOM 515, CUSTOM-HOUSE, NEW YORK CITY,
Wednesday, January 13, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz Rosenthal, Mr. F. L. Crawford, Mr. W. Cleveland Runyon.

JOHN M. JONES, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your full name and your position with the Interstate Commerce Commission?—A. John M. Jones; in charge of the tariff department of the Interstate Commerce Commission.

Q. How long have you been?—A. Since the first of June, 1908.

Q. What was your business prior to that time?—A. Railroad business.

Q. With what company?—A. Southern Railway.

Q. What position?—A. Chief of its tariff department.

Q. For how many years?—A. I was chief of its tariff department for probably seven years.

Q. What?—A. I was chief for probably seven years. I was in the railway service for twenty-two years.

Q. In the tariff department?—A. In the freight traffic de-
14081 partment; yes.

Q. And chief of the tariff bureau for seven years?—A. For probably seven years; yes, sir.

Q. As such was it your duty to make out, construe, and quote tariffs of the Southern Railway?—A. It was.

Q. And since you have been with the Interstate Commerce Commission you have had charge of the tariff bureau?—A. Yes, sir.

Q. What are your duties as chief of the tariff bureau?—A. I have supervision over that department; give direction to its work; interpret tariffs; application of rates.

Q. I show you the Grand Trunk Railway tariff, I. C. C. No. A-944, which has been introduced in evidence in this case, effective December 12, 1904, in connection with the National Despatch-Great Eastern Line, Shippers and Agents' Guide No. 9, known as the billing instructions. Does that tariff, in your opinion, in connection with the Great Eastern billing instructions above named, apply Boston rates to any other points in New England?—A. It does not.

Q. Please state why.—A. The billing instructions on page 1, third paragraph, read: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested." In my opinion that prohibits the application of these instructions in connection with such shipments.

Q. What does "special tariffs" refer to in that note, in your opinion?—A. The usual or general use of that term was
14082 to indicate a specific tariff.

Q. Naming a rate from a point to a point?—A. Or a commodity tariff, as we call it, from point to point.

Q. On the second page of this tariff, I. C. C. No. A944, I find the following: "For list of stations to which above rates apply, see various fast freight lines billing instructions." What, in you opinion, does that mean?—A. That is an indefinite tariff provision, in that it does not refer to the specific billing instructions which will apply; but during the period represented by the life of that tariff the application of that would have been to apply these rates to any points shown in any billing books which were themselves applicable to shipments of petroleum and its products.

Q. Which billing books contain no restriction?—A. Which contain no restriction as to that application.

Q. There are other places named in that specific tariff, I. C. C. No. A944, than under the New England points, are there not?—A. Yes, sir.

Q. For example, Philadelphia, New York, Jersey City, and points in New York?—A. Yes, sir; all of those points.

Q. There are other billing books that extend the application of those rates to those other places, are there not?—A. I understand that there are.

Q. And if there are such books, that would apply to those wouldn't it?

Mr. ROSENTHAL. I object to that on the ground that these other books are the best evidence of what they are; and the wit-
14083 ness does not pretend to have any personal knowledge as to whether there are other books.

Q. Just answer the question.—A. Yes; there are other such books, though I could not designate them by name at the moment.

Cross-examination by Mr. ROSENTHAL:

Q. Mr. Jones, you say you are chief of the tariff department of the Interstate Commerce Commission?—A. In charge of the tariff department of the Interstate Commerce Commision.

Q. What is your official title?—A. In charge of tariffs.

Q. Just "Mr. Jones, in charge of tariffs?"—A. Yes, sir.

Q. What does "in charge of tariffs" mean? That you are the custodian of the tariffs there?—A. No. The secretary of the commission, under the law, is the custodian of all papers.

Q. How many men are there in your particular department?—A. About 98.

Q. 98 men?—A. Yes, sir.

Q. Are you at the head of those 98 men?—A. Yes, sir.

Q. And those 98 men have to do with what?—A. Filing; preservation.

Q. Of the tariffs?—A. Of the tariffs, and examination of them in cases of complaints.

Q. The examination of what?—A. The examination of the tariffs in cases of complaint, preparation of rate statistics and statements.

Q. So that you are really chief of the filing room there?—A. No. That is a part of my duties.

14084 Q. What other duties have you beside the preservation of the files and the seeing that when a particular tariff is sent there to be filed that it is properly filed?—A. It is my duty to see that a tariff that is intended for filing complies with the regulations of the commission made under the law.

Q. Complies with the rules made by the commission with respect to the filing of such tariffs?—A. With respect to the make-up of the tariff and its contents.

Q. What else?—A. To take up with carriers all violations of these rules.

Q. To take up with what?—A. With the carriers all violations of those rules. I am called upon almost daily to hear carriers and to interpret the rules.

Q. The rules of the commission, you mean?—A. Yes, sir: of the commission.

Q. Who is your superior officer?—A. I report directly to Commissioner Clark.

Q. The secretary of the commission?—A. No, sir; Commissioner Clark.

Q. Oh, to Commissioner Clark?—A. Yes, sir.

Q. And how long have you been occupying that position?—A. Since the first of June, 1908.

Q. And what did you do before that?—A. I was in the employ of the Southern Railway Company.

Q. Prior to June 1st, 1908?—A. Yes, sir.

Q. What did you do for the Southern Railway Company?—A. I was chief of its tariff department.

Q. What does that mean?—A. The compilation and publi-

14085 cation of all tariffs was under my supervision.

Q. When did you first have your attention called to the Grand Trunk tariff, I. C. C. A944, together with the tariff No. 9 of the National Despatch-Great Eastern Line?—A. On October 9, 1908.

Q. By whom?—A. By Mr. Crossland.

Q. Where?—A. He wrote me from Chicago.

Q. That was at the time that the defendants in this case were putting in their testimony with respect to these tariffs, at Chicago?—A. I have no knowledge of it.

Q. Mr. Crossland is an employee in the filing department of the Interstate Commerce Commission, is he not?—A. Yes, sir.

Q. And do you know whether he was present in Chicago while that hearing was going on?—A. I think he was.

Q. With whom did you first talk about these tariffs?—A. Well, I examined the tariffs——

Q. With whom did you first talk?—A. After reaching——

Q. With whom did you first talk about these tariffs, is the question. That is a very simple question.—A. Commissioner Clark.

Q. Who next?—A. No one.

Q. No one?—A. No, sir.

Q. You don't mean that absolutely, do you?—A. You mean at the time here in question, or at any subsequent date?

Q. I mean at any subsequent date.—A. With Mr. Kellogg.

Q. When?—A. To-day.

Q. Who else?—A. Mr. Durand.

Q. When did you talk with Mr. Durand?—A. To-day.

14086 Q. Who else?—A. Mr. Smith.

Q. Who is Mr. Smith?—A. He is connected with the Baltimore & Ohio Railroad.

Q. Where?—A. At Baltimore.

Q. In what capacity?—A. He is the freight traffic agent.

Q. Was he present at the talk between you and Mr. Durand and Mr. Kellogg?—A. He was not.

Q. You talked with him about these tariffs, did you?—A. Yes, sir.

Q. Did he have a different point of view than you had as to the interpretation of them?

Mr. KELLOGG. That is objected to as immaterial whether he had or not.

Q. Please answer.—A. He said that he thought it was a question of doubt in his mind as to whether my construction of it was right.

Q. Is that Mr. H. C. Smith, freight tariff agent of the Baltimore & Ohio road, at Baltimore, Maryland?—A. That is the gentleman.

Q. Had he been asked to come here to testify?—A. I have no knowledge of it.

Q. You don't know about that. His name was furnished us as a witness who would be called this morning by the Government. Where did you meet him?—A. In the adjoining room.

Q. In the room adjoining this room where you are now being examined?—A. Yes, sir.

Q. And who was present when you met him there?—A. Well, there was a large number of gentlemen in there, several of whom I

14087 do not know.

Q. Was Mr. Durand there?—A. He was in the room part of the time.

Q. And you and Mr. Smith talked about the interpretation of this tariff—that is, of tariff A944—and that No. 9 National Despatch-Great Eastern Line?—A. We did.

Q. And you told him what your interpretation was?—A. Yes.

Q. And you told him that your interpretation was what you have just now testified?—A. Yes, sir.

Q. Namely, that they did not make a rate from Cleveland into the New England territory?—A. Other than Boston.

Q. Other than Boston, when taken together?—A. Yes, sir.

Q. And Mr. Smith told you that he doubted your interpretation?—A. He said he thought there was room for question about that; yes.

Q. Is that just what he said?—A. I could not recall his exact statement.

Q. Well, it is not over twenty minutes that you had that talk, is it?—A. I don't know——

Q. What else did he say?—A. I could not tell you definitely what he said.

Q. Is that all you can now tell us of the talk that you had with Mr. Smith twenty or thirty minutes ago?—A. As to that particular matter, yes. We were not talking about that all the time.

Q. Well, that constituted the principal subject-matter of your discussion, didn't it?—A. No, sir.

Q. That was the only thing that you were discussing or debat-
14088 ing, wasn't it?—A. With Mr. Smith?

Q. Yes.—A. No, sir; it was not.

Q. The interpretation of that tariff?—A. No, sir; it was not.

Q. Don't you know that he was called here to testify as a witness upon this very same subject-matter?—A. I have no knowledge upon that subject.

Q. Did he not tell you that?—A. He did not.

Q. And you did not hear that?—A. No, sir.

Q. You do not know why he was there in the witness room, do you?—A. I can draw my own conclusions, that is all.

Q. What were your conclusions?—A. I supposed that he was interested in this case.

Q. In what regard? In so far as the interpretation of that tariff was concerned?—A. Not so far as I know.

Q. Not so far as you know?—A. No, sir.

Q. And you had not the slightest idea and have not been told why he was called, then?—A. I had not the slightest idea when I discussed that tariff with him that he had been called as a witness to testify in connection with that tariff.

Q. How did you come to discuss that tariff with him?—A. Simply because I wanted his opinion.

Q. Why did you want his opinion?—A. Because he was in the same line of business that I have been engaged in all along, and I thought it would be of interest to me to know if he took the same view of it that I did.

Q. How long have you known him?—A. Four or five years, I guess.

Q. And he is a man of experience?—A. I think so.

14089 Q. You wanted to ascertain, before you testified as a witness, whether he would take the same point of view concerning the interpretation of those two documents, as you?—A. There was no doubt in my mind at all.

Q. Is that what you sought to ascertain in your talk with him?—A. There was no doubt in my mind at all.

Q. Is that what you sought to ascertain?—A. I sought to ascertain if he took the same view that I did.

Q. Yes. Why?—A. Simply for my own information.

Q. Why did you wish any information upon that subject-matter?—A. I just wanted to see if we were of the same opinion as to the interpretation of the tariff.

Q. Why?—A. I had no particular reason other than my own gratification.

Q. Is it not because it was a doubtful question in your own mind?—A. No, sir; not a bit.

Q. So it was a mere matter of curiosity on your part, how this other man would interpret the tariff?—A. It was.

Q. This other man who had also been called here as a witness?—A. It was a mere matter of——

Q. Curiosity?—A. Well, you might call it curiosity.

Q. And how much time did you spend with him in the discussion of that subject-matter?—A. Not over five minutes, I guess.

Q. Did he tell you that he had theretofore examined those two documents?—A. He told me he had never seen them before.

Q. Did you show them to him?—A. Yes.

Q. Why?—A. For the reason I have already stated.

Q. Simply as a matter of curiosity?—A. Yes, sir.

14090 Q. And to fortify your own opinion?—A. No, sir; not to fortify my opinion.

Q. Well, merely as a matter of curiosity?—A. Merely as a matter of curiosity.

Q. And you showed hom those two documents?—A. Yes.

Q. And he examined them?—A. Yes.

Q. And he told you that in his judgment there was great doubt about your interpretation of them?—A. He said there was room for doubt.

Q. And what did you say?—A. I told him that I did not agree with him.

Q. And what did he say then?—A. He said, "It is a question of doubt in my mind."

Q. Didn't he then say, "They don't want me as a witness"——A. He did not.

Q. ——"because I am doubtful about this question?"—A. He did not.

Q. Or "because I do not agree with you?"—A. He did not.

Q. He didn't say anything of the kind?—A. No, sir.

Q. Is that all the talk you had with him?—A. With reference to this book, yes.

Q. Did you point out to him the reasons for your interpretation?—A. Yes, sir.

Q. All of them, as you have given them here?—A. Yes, sir.

Q. And after you had pointed out the reasons for your interpretation he told you there was room for great doubt?—A. There was room for doubt.

Q. For doubt. You remember his exact language on that, do you?—A. No.

14091 Q. Well, what was his language?—A. I said I don't remember his exact language.

Q. Did he say there was room for doubt, or there was room for great doubt?—A. He did not use the word "great."

Q. Did he say there was room for doubt?—A. In other words, he did not emphasize it.

Q. Did he say there was room for doubt?

Mr. KELLOGG. He has answered that already eight or ten times.

Mr. ROSENTHAL. He has not answered it once.

WITNESS. I could not quote his exact language.

Q. Well, what did he say?—A. I can not quote his exact language.

Q. You can not quote his exact language?—A. No.

Q. Can you give us the substance of his language?—A. As I have already given it; yes.

Q. What was the substance of his reply?—A. That there was room for doubt.

Q. Did he use the word "doubt?"—A. Yes.

Q. Did he use the word "room?"—A. I am not positive about it.

Mr. KELLOGG. How did he spell it?

Q. That is all you remember about it, is it?—A. He said——

Q. Is that all you remember about his exact language there in that connection—that he used the word "doubt?"—A. Yes.

Q. That is all, is it?—A. Yes.

14092 Q. When did you talk with Mr. Durand about the interpretation of these two tariffs?—A. This morning.

Q. Did he give you his interpretation of them?—A. I don't think he did.

Q. Don't you know whether he did or not? Will you swear that he didn't?—A. No; I couldn't swear that he didn't.

Q. How long ago is it since you talked with him? It is now five minutes past eleven.—A. Some time after half past nine.

Q. What kind of a tariff do you call A-944, issued by the Grand Trunk Railroad?—A. A commodity tariff.

Q. It is not a class tariff?—A. No, sir.

Q. It relates only to petroleum and its products?—A. Yes, sir.

Q. That is true, isn't it?—A. Yes, sir.

Q. Would you call it a special tariff?—A. Yes.

Q. It is a special commodity petroleum tariff; that would be a full characterization of it, wouldn't it?—A. I think that would be a proper description of it.

Q. Now, the instruction which is the basis of your interpretation of these two tariffs, reads as follows: "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested." Would tariff A-944 be a special tariff, within the meaning of that statement, in your judgment as an expert?—A. I don't think so.

Q. Why not?—A. That provision, in my judgment, refers
14093 to the separate tariffs of the interested carriers, under which they could make what we call a combination rate.

Q. What do the words "special tariff" in that provision mean? Do they not mean just what they say?—A. Yes.

Q. And this is a special tariff, as you have already said?—A. That is a special tariff.

Q. On this special tariff, A-944, I find the following: "Grand Trunk Railway System lines west of Detroit and St. Clair Rivers and Detroit & Toledo Shore Line Railroad in connection with"—among others—"Nat. Despatch-Great Eastern Line." What does that mean?—A. The reference on the title-page there is to the connections in this other book.

Q. The reference on the title-page there, "National Despatch-Great Eastern Line," is a reference to this book No. 9 of the National Despatch-Great Eastern Line, isn't it?—A. Yes; for the purpose of making them parties to this tariff.

Q. For the purpose of making National Despatch-Great Eastern Line No. 9 parties to this tariff A-944?—A. No; for the purpose of making the carriers named in that billing instruction parties to this book, instead of setting out all of their names.

Q. Where is there any such limitation as that on the tariff? I want to get your interpretation of that.—A. The tariff reads, "In connection with Atchison, Topeka & Santa Fe Ry.," and various other carriers which it names, "and connections as specified in the following Agents' Guides," among them being——

Q. The National Despatch?—A. National Despatch-Great
14094 Eastern Line. The purpose is explained by the words "and connections."

Q. And just what does that mean do you say?—A. The tariff applies in connection with these named carriers and connections specified in this book. It couples them up as parties to the tariff.

Q. What does this list on page 2 of Grand Trunk tariff A-944 mean, to wit, "For list of stations to which above rates apply, see various fast freight line billing instructions?"—A. That is an indefinite tariff provision.

Q. Why is it indefinite?—A. Because it does not specifically refer to the books by I. C. C. No. or name.

Q. Isn't it a general reference, referring to all fast freight line billing instructions?—A. Worded as it is, it would apply in connection with all such billing instructions which were themselves applicable on shipments of petroleum.

Q. Have you told us all of the people you talked with about this tariff?—A. Yes, sir.

Q. You have not talked about it with any railroad man excepting Mr. Smith?—A. No, sir.

Redirect examination by Mr. KELLOGG:

Q. When Mr. Crossland wrote you about that did you write him about the tariff?—A. I did.

Q. Have you a copy of the letter?—A. I have.

Q. How long after that was it that you saw Mr. Crossland?—A. I don't remember. He was at Chicago some time.

14095 Q. Is the quoting of rates a part of your duties? Do you have to quote rates in the department?—A. Yes, sir.

Q. How do you quote them—to the shippers or people who inquire, or how?—A. We do not quote rates on business yet to move. We would refer the applicant to the carrier.

14096 J. B. MARTIN, sworn in behalf of petitioner, in rebuttal, testified as follows:

By Mr. KELLOGG:

Q. What is your full name?—A. James B. Martin.

Q. Where do you reside?—A. At Bradford, Pennsylvania.

Q. What is your business?—A. I am superintendent of the United States Pipe Line.

Q. How long have you been superintendent of the United States Pipe Line?—A. About 8 years.

Q. Where does that pipe line run from?—A. The United States Pipe Line, from Oil City to Marcus Hook.

Q. A distance of about how many miles?—A. A distance of about 475 miles.

Q. How many lines have you?—A. We have two, a crude and a refined line.

Q. That is, you have a line through which you transport crude oil exclusively?—A. Yes, sir.

Q. And you also have a line through which you transport refined oil exclusively?—A. Yes, sir.

Q. What lines of pipe does the United States Pipe Line connect with? Where do you say it starts?—A. At Oil City. It connects with the Producers and Refiners', at Oil City.

Q. Where does the Producers and Refiners Pipe Line extend?—A. It extends to Pine Grove, West Virginia.

Q. And generally through what oil field?—A. Through the Washington field, Pittsburgh, and from there to West Virginia.

14097 Q. Of what size are the pipes of the United States Pipe Line?—A. We have a four inch crude line and a five inch refined oil line. From Titusville to Bradford we have a five inch crude line; the balance of it, four.

Q. Does the gathering line, or the Producers & Refiners' Line, as you call it, reach any other fields than you have named?—A. We take in some Ohio oil.

Q. You mean southeastern Ohio?—A. Yes, sir.

Q. That is called Pennsylvania field?—A. The same thing.

Q. The southeastern Ohio field is called the Pennsylvania oil, isn't it?—A. Yes, sir; the same grade of oil exactly.

Q. To what refineries do your lines run in western Pennsylvania—your crude or your refined line?

Mr. CRAWFORD. I object to this question and to questions along this line as not proper rebuttal.

A. The Producers & Refiners connects with 6 refineries at Oil City and three at Titusville; I believe that is the number.

Q. Does your refined oil pipe line connect with a large number of refineries in western Pennsylvania, or small ones, or what?—A. Our refined line?

Q. Yes.—A. I think we have 3 at Titusville, 6 at Oil City, and 4 or 5 at Warren.

Q. These refineries are not refineries that are owned by the Pure Oil Company or the United States Pipe Line?—A. No, sir.

Q. During the time you have been connected with the United States Pipe Line has it transported oil, both crude and refined, for different owners, as common carrier, to the seaboard?—A. Yes, sir.

14098 Q. Take the refined pipe line. State whether you carry oil for these refineries that you have named, from western Pennsylvania, and deliver it at Marcus Hook or Philadelphia.—A. Yes, sir; we do.

Q. How many grades of refined oil do you carry?—A. We carry two different grades—our regular export and a higher grade oil.

Q. What is the higher grade?—A. The Water White oil.

Q. The regular export is of what color?—A. A sort of straw color.

Q. Yellowish?—A. A yellowish color.

Q. And the Water White is white?—A. Perfectly white.

Q. Would mixture of the yellowish oil (the export oil) with the Water White destroy the value of the Water White?—A. Yes, sir.

Q. What amount of mixture? A very small mixture?—A. A very small mixture would put a large amount of Water White off color.

Q. You pump these oils through the same pipe?—A. Yes, sir.

Q. One following the other?—A. One follows the other; yes, sir.

Q. In what quantities or batches do you transport this yellow export oil and the Water White oil to the seaboard?—A. The Water White oil usually comes in batches of from 30 to 60 thousand, sometimes smaller batches, but about thirty or thirty-five to forty thousand barrels—about that.

Q. And the other—the export oil?—A. That is our regular everyday work. The line is working steadily on the export oil, except when we make a run of Water White.

14099 Q. Have you transported smaller amounts of Water White for, say, the Cornplanter Company, to the Union Petroleum Company?—A. We have for the Union Petroleum Company to their plant at Marcus Hook.

Q. From where?—A. From the Wellsville field.

Q. From the Wellsville field to the Union Petroleum Company?—A. At Marcus Hook.

Q. Water White oil?—A. Yes, sir.

Q. In smaller amounts than 25,000 barrels?—A. Yes.

Q. How small?—A. 5,000 barrel lots.

Q. Keep them separate from the yellow oil?—A. Entirely separate; yes, sir.

Q. That is how many miles?—A. I can give you the exact figures if you wish them.

Q. I would like the exact mileage, or to have it reasonably accurate.—A. You want this from Wellsville? [Referring to papers.] It is about 195 miles.

Q. How far is it from Warren and Bradford?—A. To Marcus Hook?

Q. How far did you say it was from Wellsville?—A. From the Wellsville field to Marcus Hook, about 195 miles.

Q. How far is it from Bradford and that district?—A. To Marcus Hook?

Q. Yes; from Warren and those other places?—A. 235 miles from Bradford.

Q. When you said you had 470 miles of pipe, what did you mean?—A. That goes clear to Oil City.

14100 Q. From Oil City it is about 470 miles?—A. About 470 or 475 miles.

Q. You pump these oils from all those places, do you?—A. Yes, sir.

Q. Refined oil. From Oil City?—A. Yes, sir.

Q. And follow a batch of refined oil, of the Water White, with the yellow oil?—A. Yes, sir.

Q. Or vice-versa?—A. Yes, sir.

Q. How many pumping stations have you?—A. We have seven; seven that handle refined oil.

Q. And how many the other?—A. We have nine in all.

Q. How many between Wellsville and Marcus Hook?—A. That handle the Wellsville oil?

Q. Yes.—A. Three.

Q. Have you yourself made the cut-off between the yellow oil and the white refined oil at Marcus Hook, and do you know whether there is any appreciable mixture?

A. I have never made a cut-off at Marcus Hook. I have at all other points along the line, but I never happened to make a cut at Marcus Hook.

Q. Have you at Philadelphia?—A. No. Marcus Hook is our Philadelphia terminal. But at our other pumping stations.

Q. You have at other pumping stations?—A. Yes, sir.

Q. How much mixture is there—in the refined oil, I am speaking of?—A. We don't figure that there is any. We figure that we get out barrel for barrel.

Q. Have you seen the cut-off between the yellow oil and the white oil yourself?—A. Yes, sir.

14101 Q. How is that done? Explain it; and explain how much of a mixture there is.—A. We know the holding capacity of the line, to begin with, when we start to pump the Water White oil

to expel the export, and we know that a certain amount of oil pumped into that line will expel that much that is already in the line, and we know from the amount that we put in just when the oil is due to arrive at one station, and about the time that it is due to arrive there our oil inspector is always on hand to inspect the oil at the time it is due, and the oil will reach these points within two or three or four minutes of the time that we give the inspector notice that it is due.

Q. You have done that yourself many times?—A. Many, many times.

Q. Just state how you do it.—A. When we know the oil is due to arrive we are there to inspect it. The Water White oil and export are cut by color. The Water White oil will show up white around the edges, and the moment that we see the first appearance of the Water White oil we can cut it into another tank and we have got a solid stream of Water White oil. It comes that quick that in probably a minute or two minutes sometimes, after you just notice the edges commence to brighten up, the solid stream is there.

Q. Pure white oil?—A. Pure white oil.

Q. Do you take samples during that time?—A. Yes, sir; always take samples.

Q. Always?—A. Yes, sir.

Q. Then you do that right along, and have for years, for various people transporting Water White and yellow oil through
14102 those lines?—A. Yes, sir.

Q. Now, how about the crude lines? Do you transport crude oil for different owners, in separate batches, different grades of oil, through your line, one following the other?—A. Yes, sir.

Q. What grades of oil?—A. We handle oils from three different fields, but it is 44½ gravity against 41½ gravity.

Q. The Pennsylvania oil is now divided into about how many grades—commercially, I mean; it is used in how many grades?—A. I can't say as to that. We only handle three grades.

Q. Three grades?—A. From three fields.

Q. And you keep those separate?—A. Yes, sir.

Q. What is known as the heavy Pennsylvania oil comes from what district?—A. The heavy oil comes from Oil City.

Q. What is the gravity of that?—A. I can't tell you what the gravity of that oil is. We don't handle that in straight runs.

Q. What is the gravity of the lowest gravity oil that you keep separate from your higher gravity?—A. 41½.

Q. And the higher gravities are how much?—A. 44.5; 44½.

Q. Where does each come from?—A. The higher gravity oil from West Virginia and the lower Pennsylvania field; the other, the 41.5 gravity, from Wellsfield.

Q. In what quantities or batches do you transport those oils to the seaboard and keep them separate?—A. From three to five thousand barrels.

Q. Do they mix to any extent?—A. Very little.

Q. To what extent?—A. Very little.

14103 Q. Have you yourself watched the cut-offs, to see how much they mix?—A. I have.

Q. Many times?—A. A number of times.

Q. Have you made any tests?—A. Yes. sir.

Q. Now, do you do that for different owners, continuously, as a common carrier?—A. Yes, sir.

Q. What tests have you made?—A. I have made a test of a batch of oil that we delivered to Freemansburg, of less than 4,000 barrels; just completed it.

Q. Will you state exactly what you did, the two grades of oil you used, what the result was, and how much mixture there was between those two grades of oil, stating the time you made the test?—A. I have the figures [referring to a memorandum]. Do you want the figures?

Q. Yes, sir.

Mr. CRAWFORD. I object to this testimony, as not proper rebuttal. I suppose that may apply to all subsequent questions along this line?

Mr. KELLOGG. Yes.

A. This is from West Bingham pump station to Athens pump station.

Q. Where is West Bingham?—A. In Potter County, Pennsylvania.

Q. Near Wellsville?—A. Near Wellsville.

Q. Where is Athens?

Mr. CRAWFORD. Just a moment. I would like to know what the witness is testifying from.

Q. What memorandum is that? Did you make it yourself?—A. I made it myself, yes, sir.

14104 Mr. CRAWFORD. From what?

WITNESS. From a run of oil that was started into our line by the Union Petroleum Company, December 25.

Mr. CRAWFORD. Did you make the observations?

WITNESS. Yes, sir.

Mr. CRAWFORD. Personally?

WITNESS. Personally.

Mr. CRAWFORD. And recorded them yourself?

WITNESS. Yes, sir.

Q. Go ahead.—A. A distance of 65 miles.

Q. Is there a pumping station between?—A. One pumping station. It was relayed once.

Q. All right. Did you mean the Union Petroleum Company or the Columbia?—A. The Columbia Pipe Line Company.

Mr. CRAWFORD. What is that? Won't you make that clear?

Q. The name of the owner of the oil——A. —— was the Columbia Pipe Line Company.

Q. What oil preceded this batch of oil?—A. This was preceded by Pennsylvania crude, 44.5 gravity. This run of oil was 41.5.

Q. How much was there in the batch that you transported for the Columbia Pipe Line Company?—A. 3,486 barrels.

Q. What was the gravity of that oil?—A. 41½.

Q. Now, in the 65 miles it had been relayed once, through one pumping station?—A. Yes, sir.

Q. Did you watch the cut-off at the 65 miles?—A. Yes, sir.

Q. State the exact result.—A. The indication at 10.28 a. m. was that the gravity was 44.5. There was no change. At 10.30 gravity 42.7. At 10.32, gravity 41.5.

14105 Q. In other words, the change was complete in four minutes?—A. Four minutes.

Q. How many barrels of contaminated or mixed oil was there between those two grades of oil?—A. The total amount received in four minutes was about 8 barrels.

Q. And did you make tests yourself of these oils?—A. I did.

Q. What was the gravity of the whole 8 barrels?—A. It averaged 42.9.

Q. Did you test that again, that same shipment?—A. Yes, sir.

Q. Where?—A. At the same pump station, every two hours, as it was being pumped from that tank.

Q. Every two hours?—A. Every two hours.

Q. Was there any other place on the line where you made a test?—A. At the next pumping station—Wilkesbarre.

Q. How many miles east was that?—A. 63 miles.

Q. That would make it how far?—A. 126 miles.

Q. How many times was it relayed between Athens and Wilkesbarre?—A. Once.

Q. What was the result at Wilkesbarre?—A. At Wilkesbarre at 12.39 a. m. the gravity was 43.8. Now, this 41.5 gravity oil was preceded, from Athens to Wilkesbarre, by 43.8 gravity oil. At 12.39 the gravity was 43.8.

Q. That was a different batch of oil than the other?—A. Yes.

Mr. CRAWFORD. You are not talking about the same batch now?

WITNESS. Yes, the same batch of oil.

14106 Mr. CRAWFORD. The same 3,486 barrels?

WITNESS. Yes, sir. But it was preceded from Athens by a different gravity oil.

Mr. CRAWFORD. You mean you shipped a different batch into the line?

WITNESS. No; we pumped the same batch into the line, but the oil that was ahead of it was a different gravity oil. At 12.39 a. m. the gravity was 43.8; at 12.40, 42.7; at 12.41, 42.6; at 12.42, 42.2; at 12.44, 41.6. Now, this oil was 41.6 when it left Parsons, by reason of it having gone in the 41.5 gravity oil; 3,496 barrels was received into a tank containing 308 barrels of 44.5 gravity.

Q. You completed the first test you made?—A. Yes, sir.

Q. Now, it started on its journey, on the second trip, from what place?—A. Athens.

Q. When it went in at Athens, you say it went into a tank where there was some other oil?—A. Yes, sir.

Q. How much—308 barrels?—A. 308 barrels.

Q. In other words, the 3,486 barrels went into a tank containing 308 barrels?—A. Went into a tank containing 308 barrels more.

Q. And when you pumped it out you pumped 3,486 barrels (the amount that went in), did you?—A. Yes, sir.

Q. And you say that that changed the gravity?—A. One tenth of one degree.

Q. Owing to the mixture in that tank?—A. Owing to the mixture in that tank.

Q. When you received it at Wilkesbarre it was of what gravity?—A. At 12.44 a. m. it was 41.6.

14107 Q. And did it continue to run 41.6?—A. Continued 41.6.

Q. How many minutes was there that that contaminated oil in some degree was running?—A. Five minutes.

Q. What was the amount of contamination?—A. About 7 barrels, as near as we could figure.

Q. 7 barrels?—A. 7 barrels.

Q. Was the line smaller there?—A. No, it it the same sized line. It probably flowed faster or slower than at the preceding stations.

Q. Did you make any other test?—A. Yes, sir.

Q. Where?—A. At Freemansburg.

Q. That was the same batch of oil, was it?—A. The same batch of oil.

Q. How far east of Wilkesbarre is Freemansburg?—A. 64 miles.

Q. How many times did you have to relay it between those points?—A. There was no relay.

Q. How many barrels was that?—A. 3,486.

Q. 3,486 barrels. You received it at Freemansburg?—A. Freemansburg.

Q. Was it preceded by the same grade of oil as in the last?—A. That was preceded by oil from Parsons (43.8 gravity), the same as the last.

Q. What was the result at Freemansburg?—A. Indications at 10.40 a. m., 43.8; 10.42, 43; 10.43, 43; 10.44, 42.8; 10.45, 42.8; 10.46, 42.5; 10.47, 42.5; 10.48, 42; 10.49, 41.7. This was 41.7 leaving Parsons, on account of the mixture with high-grade oil in the tank it was received at in Parsons, or Wilkesbarre.

Q. There was some oil in the tank there?—A. Yes, sir; it
14108 was received into a tank containing 527 barrels of 43.8 gravity oil.

Q. You tested it at both the leaving point and receiving point?—A. Yes, sir.

Q. How much contamination was there at Freemansburg?—A. At Freemansburg there was a contamination of 15 barrels. The average gravity of the 15 barrels was 42.7.

Q. Did you test it again?—A. We tested it after it was received into the tank——

Q. After it left Freemansburg?—A. No; it was shipped by tank cars.

Q. That was the destination?—A. That was the destination.

Q. Was this batch of 3,486, barrels that you were transporting regularly in the course of your business?—A. Yes, sir.

Q. For what company?—A. For the Columbia Pipe Line.

Q. The Columbia Pipe Line has a pipe line in the Wellsville field, has it?—A. It has; yes, sir.

Q. And you transport their oil sometimes to what place?—A. Freemansburg.

Q. From there they transport it by rail?—A. To Constable Hook.

Q. Where they have a refinery?—A. Yes, sir.

Q. You do that regularly for them?—A. Yes, sir.

Q. How often do you transport for them?—A. I think about once a month.

Q. In batches of about what size?—A. They will average close to 5,000 barrels.

Mr. CRAWFORD. Are you talking about crude oil?

WITNESS. Crude oil; yes, sir.

14109 Q. And is the business done in the same manner that you did it this time?—A. We don't always take the gravity, to weigh it at both ends, because we know the actual holding capacity of the line, and the time we figure it is due to arrive (we know that it will arrive there within a minute or two), and for that reason we don't always take the gravities; we take it for granted that it is there.

Q. And the men will cut it out?—A. The men will cut it.

Q. That is done as a business by your company right along, is it not?—A. Yes, sir.

Q. Year out and year in?—A. Yes, sir.

Q. Do you transport for other companies, crude oil?—A. No, sir; for no other concerns.

Q. To Freemansburg. You transport large quantities of crude oil to Marcus Hook, do you not?—A. Yes, sir.

Q. For different refineries?—A. Well, I don't know; I think it all goes to the Pure Oil Company.

Q. You transport to the Pure Oil Company oils of different grades, and keep them separate, don't you?—A. Yes, sir.

Q. And in batches of what amount?—A. From five to eight or ten thousand barrels.

Q. Are you a pipe line engineer?—A. Yes, sir.

Q. How long have you been such?—A. Since 1884.

Q. Working in Pennsylvania?—A. Yes, sir.

Q. With what companies?—A. I worked for the Tidewater Pipe Line for about 12 years. I worked for the Standard for nearly 2 years.

Q. On what line?—A. The southern.

14110 Q. Do you know whether the Tidewater transported different grades of oil and kept them separate?

Mr. CRAWFORD. I object to that as immaterial and not rebuttal.

A. No; I don't know that they ever did.

Q. Is it practical to transport different grades of both refined and crude oil through the same pipe? I do not mean both refined and

crude through the same pipe, but both refined of different grades and crude of different grades, as common carrier, in batches, and keep them separate?

Mr. CRAWFORD. I object to that question on the ground that the witness has not qualified generally as to the practicability; he only testified as to the single pipe line of the United States Pipe Line Company. It calls for a conclusion far beyond any qualifications shown by this witness.

A. Yes, sir.

Q. And for 8 years your company has been doing it?—A. Yes, sir.

Q. You have stated how many different companies you transport refined oil for, I believe?—A. Yes. The Union Petroleum Company.

Q. Well, refined oil, I say.—A. Refined oil; yes, sir.

Q. All those refineries that connect with your concern ship refined oil, don't they?—A. Yes, sir.

Q. You were requested to make this experiment, were you not, by Mr. Tarbell or myself?—A. Yes, sir.

Mr. CRAWFORD. What experiment?

WITNESS. This test; this run of crude. This last run.

Mr. CRAWFORD. The 3,486?

WITNESS. Yes, sir.

14111 Q. You didn't select any particular batch of oil as being more favorable to the Government than any other, did you?—A. No, sir. All others had gone forward, that I could get hold of, until this run came on.

Q. No suggestions were made to you as to how you should do it?—A. I was to take the gravity, and see how long it took the change to come about between the two straight runs of oil.

Q. You didn't change the method of your operation from the ordinary operation every day, did you?—A. Not at all; no, sir.

Q. This was in cold weather, was it?—A. This run?

Q. Yes, sir.—A. This run was started December 25.

Q. What was the weather?—A. It was cold; very cold. The temperature of the oil was about 40.

Cross-examination by Mr. CRAWFORD:

Q. Mr. Martin, where do you say the pipe line of the United States Pipe Line Company begins?—A. At Oil City.

Q. And the eastern terminal is Marcus Hook?—A. Marcus Hook.

Q. I think you said that was a total distance of 470 miles?—A. Approximately.

Q. You have one pipe through which you transport refined oil and one through which you transport crude oil?—A. Yes, sir.

Q. And the refined pipe is 5 inches in diameter throughout the whole distance?—A. From Bradford.

Mr. KELLOGG. Is not that distance 370 miles instead of 470? Please look at your figures. We don't want any mistake about this. I think you have misquoted the figures.

WITNESS. The actual distance is 382 miles.

Q. How many barrels to the mile is that?—A. 4-inch pipe?

Q. Yes.—A. 83.

Q. Do you know what the average rate of speed of your crude oil is, through the pipe?—A. We know by the amount we pump into the line.

Q. Well, about what is the average rate of speed when the pipe line is in operation?—A. About a mile and a half.

Q. About a mile and a half an hour?—A. About a mile and a half an hour.

Q. That is to say, the head of the column would be moving about a mile and a half an hour?—A. Yes, sir.

Q. I think you said that at one time you handled some Ohio oil?—A. No. I never did.

14116 Q. You never have handled Ohio oil through that line?—A. No, sir.

Q. Nor any Mid-Continent oil, I suppose?—A. No, sir.

Q. Nor any other oil except this Pennsylvania grade that you have been speaking about? That is, the two kinds of Pennsylvania grade that you have been carrying?—A. The two grades of crude; yes, sir.

Q. But they are both included in the market under the head "Pennsylvania" grade?—A. Yes, sir.

Mr. KELLOGG. What he meant was that he handled Ohio oil that was of Pennsylvania grade.

Q. You didn't mean Lima?—A. No, sir.

14117 Q. In running refined oil through the refined oil pipe, do you follow your export oil immediately with the Water White?—A. Yes, sir.

Q. There is no intermediate mass of oil put in? Don't you put in anything by way of a buffer?—A. No, sir.

Q. Nothing of the sort. I do not know whether you stated the daily capacity of the refined oil pipe. Would you mind stating that again?—A. About 3,500 barrels.

Q. Now, Mr. Martin, most of the crude oil that you carry through that pipe you carry for one owner, do you not—the Pure Oil Company?—A. Most of it.

Q. A very large part of it, do you not?—A. Yes, sir.

Q. How much? What percentage of all the crude oil that you carry is for the Pure Oil Company?—A. Well——

Q. Nine-tenths?—A. The total amount, less about 5,000 barrels a month. I do not keep very close record of the——

Q. About what is the total that is carried per month, then?—A. Probably 60,000 barrels.

Q. So that that would be 55,000 barrels out of 60,000 barrels out of crude for one owner, would it?—A. Yes, sir.

Q. And these 5,000 barrels that you carry otherwise, among how many owners are they divided; in other words, for how many other persons do you carry crude than the Pure Oil?—A. I do not know any one but the one party—the Columbia Pipe Line.

Q. And the Columbia Pipe Line is the only owner, except the Pure Oil, for whom you carry the crude?—A. Yes, sir; to my knowledge.

14118 Q. To your knowledge, certainly. I am only asking you for your knowledge.—A. Yes, sir.

Q. For the Pure Oil Company you carry these two different Pennsylvania grade crudes that you testified about, in what quantities? You are sending them forward every day for the Pure Oil Company, are you not?—A. For the Pure Oil?

Q. One grade or the other you are sending forward every day, I suppose?—A. We are pumping on one grade most of the time.

Q. What grade is that?—A. West Virginia-Pennsylvania.

Q. That is the 44.5 grade?—A. Yes, sir.

Q. Most of the time you are pumping that?—A. Yes, sir.

Q. You say "most of the time." What do you mean, Mr. Martin? How much of the time?—A. We are pumping that when we don't have this oil for the Columbia Pipe Line Company, 41.5, 5,000 barrels a month.

Q. If you are pumping 55,000 barrels a month, or thereabouts, for the Pure Oil Company, that is practically all what—44.5 grade, is it?—A. About 44.5.

Q. And practically all one homogeneous oil?—A. Yes, sir.

Q. The only oil, then, of a lower grade that you pump—I mean of a lower gravity—is the 5,000 barrels you pump for the Columbia, and that, you say, is about 41.5?—A. Yes, sir.

Q. And you ordinarily take that in batches of about 5,000 barrels, did I understand you?—A. About 5,000 barrels.

Q. That would mean, then, that about once a month you take a batch for the Columbia of this lower gravity?—A. Yes, sir.

Q. Is it the Columbia Pipe Line Company that you transport this 5,000 barrels for or the Columbia Oil Company?—A.

14119 It is delivered to us by the——

Q. Columbia Pipe Line Company?—A. Columbia Pipe Line Company.

Q. Do you know whether the Columbia Pipe Line Company is owned by the Pure Oil Company?—A. No, sir; I do not.

Q. You do not know that?—A. No, sir.

Q. Nor you do not know whether the Pure Oil Company is interested in the Columbia?—A. No, sir; I do not know it.

Q. Do you know whether any of the officers of the Columbia Pipe Line Company are the same as those of the Pure Oil Company?—A. I do not know that they are.

Redirect examination by Mr. KELLOGG:

Q. Mr. Martin, you say you were handling about 3,500 barrels a day of that crude oil?—A. Refined oil.

Q. Oh, of refined oil. Well, when he asked you the capacity of the line, did you mean that that is the amount you are handling, or that that is the total capacity?—A. No; that is the amount we are handling.

Mr. CRAWFORD. That is the amount——

WITNESS. That is about our average pumping.

Mr. CRAWFORD. That is what you delivered at the end of the line?

WITNESS. That is what we delivered.

Mr. CRAWFORD. Well, that is what daily capacity means?

WITNESS. Well, a line might have a capacity of more than that much daily——

Mr. CRAWFORD. Well, it would not be daily capacity,
14120 would it?

Mr. KELLOGG. You could crowd the line, couldn't you?

A. Yes. That line might have a capacity of 5,000 barrels; I don't know, if it was run right up to its full capacity, just what it would be, but that is what we are handling.

Mr. CRAWFORD. That is what you are delivering?

WITNESS. That is what we are delivering.

Q. You mean the same as to the crude—what you are delivering—about 2,000 barrels?—A. That is it.

Q. Don't you take some Bradford oil occasionally to the markets?—A. Yes, sir.

Q. Well, isn't that of a different grade than the——A. The same gravity.

Q. Oh, the same gravity?—A. Yes.

Q. It is the same gravity as the Columbia oils?—A. It is the same color, and I am not positive about it being the same gravity.

Q. As the Columbia?—A. As the Columbia. I am not positive about the oil in the Bradford field.

Q. Do you keep that separate, when you take it, from the other?—A. Yes, sir; keep it separate.

Recross-examination by Mr. CRAWFORD:

Q. You do not know that it is not the same gravity as the West Virginia oil, do you?—A. I do not know whether it is the same gravity as West Virginia or not; I am not positive about that.

Q. You don't know whether it is or not?—A. No.

14121 Q. But as far as viscosity is concerned, that is practically the same, isn't it, if it has any—it all has it, of course—but I mean it is about the same?—A. It is all rated about the same class of oil, and I presume it is all about the same viscosity.

Q. And you have to pay the same money for it?—A. The same market value.

Q. In one case as in the other?—A. Yes, sir.

(A recess was here taken until 2 o'clock p. m.)

14122 WILLIAM W. TARBELL, recalled on behalf of the petitioner in rebuttal, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Mr. Tarbell, I believe you testified in this case before?—A. I did; yes, sir.

Q. You are an officer of the United States Pipe Line?—A. Treasurer and general manager.

Q. And of the Producers' Pipe Line that connects with it in the west?—A. Not actively, no.

Q. Not actively?—A. Not of the latter line.

Q. You are general manager of the United States Pipe Line?—A. Yes, sir.

Q. You heard the line generally described by Mr. Martin, your superintendent?—A. Yes, sir.

Q. He correctly states where the line runs and the size of the lines, does he not?—A. Yes, sir.

Q. How long have you been connected with the United States Pipe Line?—A. About 7 or 8 years in the capacity that I am now.

Q. Do you transport through that pipe line crude oil of different grades?—A. Yes, sir. We transport crude oil received from southeastern Ohio, western Virginia, and eastern Pennsylvania fields.

Q. Western Pennsylvania, you mean?—A. Eastern Pennsylvania fields—well, in Butler and the McDonald fields—which grades about the same. We also occasionally transport through that
14123 line Bradford crude oil, and about every month we have a run of from 4,000 to 5,000 barrels of crude oil from the Columbia Pipe Line, near Wellsville, New York State.

Q. You said "eastern." You meant "western," didn't you?—A. Western Pennsylvania.

Q. The oil coming from western Pennsylvania, southeastern Ohio, and West Virginia grades about what?—A. From 44 to 45 in Baumé gravity. That is delivered to the United States Pipe Line at Titusville from the Producers & Refiners' Oil Company, Limited, pipe lines, through gathering lines in the fields I have mentioned.

Q. The oil of the Bradford field is about what grade?—A. It runs around 41 gravity; 41½.

Q. And the oil that you get from the Columbia Pipe Line—the Wellsville field?—A. About the same gravity.

Q. Do you transport those oils as a common carrier for others?—A. Yes, sir.

Q. In what quantities do you transport oil for the Columbia Pipe Line—that heavy oil, 41½ gravity?—A. From 4,000 to 5,000 barrels a month, I would think it averaged.

Q. In batches of 4,000 to 5,000?—A. Yes, sir.

Q. You usually make one run a month?—A. But one run a month.

Q. Have you also transported Bradford oil from time to time?—A. We have at times, yes, sir; not as a regular business; we take it occasionally.

Q. In what quantities?—A. Those runs are generally from 5,000 to 8,000 barrels, as I remember them.

14124 Q. These are transported through the same pipe through which you transport the higher grades of Pennsylvania oil?—A. Yes, sir.

Q. One following the other?—A. Yes, sir.

Q. State whether the mixture of the two grades of oil is of sufficient quantity to in any way injure or make impractical the transportation?—A. We have never considered that so, and have made no extra charge for the service.

Q. You deliver the number of barrels that are put in the pipes, do you?—A. We are bound to do that; yes, sir.

Q. And you do do it?—A. We do do it; yes, sir.

Q. How about the refined oil pipe lines? Do you transport, as a common carrier, refined oil for other people?—A. We do for the refiners at Oil City, Titusville, Warren, and Bradford.

Q. How many different refineries?—A. I would think there were from 16 to 18.

Q. What grades of refined oil do you transport through your refined pipe line?—A. We have regularly two grades—what is known as the Standard White, for export—an oil that is straw color, about 45½ Baumé gravity, 110 fire test; we have Water White oil, 47½ Baumé gravity, 150 fire test. We have also occasionally a run of what is known as French test oil, an oil of about 135 fire test, about prime white in color, and a gravity around 46 Baumé.

Q. The prime white in color is a yellowish color, isn't it?—A. Well, it is a color of what is known as between Standard White and Water White; mix the two and you get the prime white.

Q. The grade which you call Standard White, is it a yellowish color?—A. Straw color.

14125 Q. Is it readily discernible from the Water White?—A. Oh, yes, sir.

Q. In what quantities do you transport these oils?—A. You mean per month or per day?

Q. No; in the separate batches of each.—A. The Water White runs are generally from 10,000 to 30,000 or 40,000. They very seldom run as low as 10,000—50-gallon barrels.

Q. 50-gallon barrels, yes. The refined oil is always understood to be 50 gallons, unless designated otherwise?—A. Yes, sir.

Q. And the crude 42?—A. 42.

Q. That is, you run the prime white export oil and follow it with from 10,000 to 30,000 barrels of Water White?—A. Yes, sir.

Q. And follow that again with export oil?—A. Yes, sir. You mean Standard White, instead of prime white?

Q. Standard White, yes, I mean.—A. Yes, sir.

Q. To what degree do the different grades of oil mix in passing through the lines?—A. It would be impossible for me to tell you that in exact figures. We accept the oil from the refiners—the higher grade oil—and credit them with the amount they deliver, under our regular rules, with the understanding that if there is deterioration we will charge it to their accounts proportionately. We have made no such charge for a long time. I can not remember when we made such charge. We have delivered them their oil at Marcus Hook without a charge for deterioration.

Q. You have filed tariffs with the Interstate Commerce Commission?—A. Yes, sir.

14126 Q. And you carry this oil as a common carrier for anybody who puts it in the line?—A. Under the state laws of Pennsylvania—the operation all being within the State of Pennsylvania.

Q. But you carry for anybody who delivers to you?—A. We do, if we have the facility and capacity.

Q. The concerns that are so situated that they can deliver to you are something like sixteen or eighteen, you think?—A. I believe so.

Mr. CRAWFORD. You are speaking of refined oil now?

Mr. KELLOGG. I am speaking of refined oil; yes, sir.

WITNESS. Refined oil; yes, sir.

Q. In your opinion, is it entirely practical for a pipe line to carry different grades of oil, one following the other?

Mr. CRAWFORD. I object to it on the ground that it has not been shown that this witness has had any other experience than in the single pipe line that he has described, and he is not qualified to answer a general question of this character.

Q. Please answer, Mr. Tarbell.—A. From my experience I would say yes, subject to the proper facilities and conditions to take care of the business submitted, or the business conditions.

Q. Yes. They have not got to have facilities for delivering oil to you and receiving it at the other end.—A. My answer is rather broad. I do not believe I can make it any more explicit, for the reason that only demonstration in test would make exact what those facilities and conditions are, if necessary.

14127 Q. In confining it to your line, you have found it entirely practical?—A. In our business we are doing it and have been doing it, and it has been practical.

Q. You know no physical reason why it can not be done, putting it through the pipes?

Mr. CRAWFORD. I object to it unless it is confined to the witness' own line, on the same grounds as before.

Mr. KELLOGG. That is what I mean.

Mr. CRAWFORD. You mean confined to his own line?

Q. Confine it to your own line. You know of no physical reason why it can not be done, entirely practical, isn't it?—A. I know of none; no, sir.

Q. Does the Pure Oil Company have any interest in the Columbia Pipe Line?—A. No, sir.

Q. The transportation you do for them is purely as a common carrier, and you are not interested in the oil as an owner?—A. No, sir. The United States Pipe Line is interested in no oil whatever as an owner, except a certain amount of oil to fill its lines.

Cross-examination by Mr. CRAWFORD:

Q. Has the Pure Oil Company any interest, by way of stock or otherwise, in the Columbia Pipe Line Company?—A. No, sir.

Q. And the United States Pipe Line also has no interest?—A. No, sir.

Q. Stock ownership, I am speaking about?—A. No, sir.

Q. Do the same individuals, or some of them, who own stock in the Pure Oil Company also own stock in the Columbia Pipe Line Company?—A. I believe the only ones of any importance are the
14128 Columbia Oil Company interests in New York. Hugh King, the McDonald estate, Thomas McGoey are the owners of the Columbia Oil Company, and they are stockholders in the United States Pipe Line.

Q. And the Pure Oil Company owns a large interest in the United States Pipe Line, does it not?—A. About 52 per cent.

Q. You are also an officer of the Pure Oil Company, I believe, are you not?—A. Yes, sir.

Q. What officer?—A. Treasurer.

Q. The refinery of the Pure Oil Company is situated in Marcus Hook, is it?—A. Marcus Hook.

Q. That refinery runs only Pennsylvania grade crude, does it not?—A. No, sir; it runs some Oklahoma crude.

Q. But chiefly it runs Pennsylvania?—A. Chiefly Pennsylvania.

Q. Pennsylvania grade crude is considered the better crude usually, isn't it?—A. It is the better grade crude; yes, sir.

Q. It is more valuable, is it not? I mean to say it gives you a better yield, does it not?—A. Of certain products which are the most valuable products; yes, sir.

Q. On the whole you get more valuable results from the Pennsylvania crude, do you not?—A. We certainly do; yes, sir.

Q. So that if you were offered a lot of Pennsylvania crude and a lot of Oklahoma crude at the same price, you would have no hesitation in taking the Pennsylvania crude?—A. No, sir.

Q. And no other refiner that you are aware of would have any hesitation?—A. No, sir.

14129 Redirect examination by Mr. KELLOGG:

Q. Mr. Tarbell, where do you get your Oklahoma crude oil?—A. We buy it delivered at Marcus Hook, from steamers.

Q. It is shipped from Oklahoma to what point?—A. I suppose it comes by the way of Port Arthur.

Q. What pipe line company?—A. The Gulf Refining Company, I believe, delivers it. What we have bought of that we have bought from the Gulf Refining Company, delivered in our tank at Marcus Hook. Of course I can not testify as to whether it comes through a pipe line or by cars, but it is supposed to be, and the contract covers, Oklahoma crude.

Q. Of course you have not followed up the line of pipe line, but you know, as a matter of common knowledge, that it comes by the way of Texas, do you not?—A. Oh, without a doubt.

Q. By steamship from Port Arthur?—A. Yes, sir.

Q. And by pipe line from Oklahoma to Port Arthur?—A. No doubt of it.

Q. What does Pennsylvania crude cost you at your refinery?—A. On the present market $2.18 for 42-gallon barrel.

Q. That includes all expenses?—A. Yes, sir.

Q. $1.78 at the wells, isn't it?—A. Yes, sir.

Q. And 20 cents for gathering lines and 20 cents for transportation from there?—A. Yes, sir.

Q. And what do you pay for the Oklahoma?—A. $1.35 for 42-gallon barrel.

Mr. CRAWFORD. You mean $1.35 at your refinery.

WITNESS. At our refinery; yes, sir.

14130 Q. Which is the more profitable to you—the Oklahoma at $1.35 or the Pennsylvania at $2.18?

Mr. CRAWFORD. I object to that question as not proper redirect and not proper rebuttal.

A. It is a pretty broad question. For certain purposes the Oklahoma crude makes us far more money than the Pennsylvania crude; but there are certain products we must have for our general markets that we can not get from the Oklahoma crude.

Q. But, if you were just refining, if you hadn't any trade built up, and were establishing a refinery, the Oklahoma crude at $1.35 is far more valuable than the Pennsylvania at $2.18, isn't it?—A. If I had but one crude to depend upon, I would prefer the Oklahoma crude, if I wanted to make money in the refining business.

Recross-examination by Mr. CRAWFORD:

Q. For lubricating oil you require the Pennsylvania crude, do you not?—A. For the better grades of cylinder stocks, and so forth, we do; yes.

Q. And they are among the most valuable products that you turn out, are they not?—A. They are; yes, sir.

Q. And have become a very large part of the general oil business, have they not?—A. Yes, sir. It would be hard to be in the general oil business without them.

14131 HORACE B. SETZLER, called on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your position, Mr. Setzler?—A. Superintendent of the National Refining Company.

Q. Where are its refineries located?—A. Findlay.

Q. Findlay, Ohio?—A. Yes.

Q. What kind of crude oil does the Findlay refinery use?—A. Lima crude.

Q. Do you know what is known as the north and south Lima crude?—A. No. It is pretty well mixed when we get it.

Q. What do you mean by "pretty well mixed?"—A. In the gathering lines, when it is brought into the refinery.

Q. You mix it, you mean?—A. We mix it in our tanks.

Q. But you use south Lima crude and north Lima crude
A. Yes, sir.
Q. In making refined oil?
Mr. CRAWFORD. You mean you use them mixed together?
WITNESS. Yes.
Q. And that company manufactures refined illuminating oil
A. Yes, sir.
Q. At this place in Findlay?—A. Yes, sir.
Q. The Standard Oil Company also does the same, does it not
Mr. CRAWFORD. If he knows.
A. I believe so.
Q. Is your oil sold in competition with the Standard oil
14132 A. Yes, sir.
Q. Is it as good as the Standard oils?
Mr. CRAWFORD. Well, if he knows. I object to the question un
he knows.
Q. If you know.—A. Yes.
Q. Have you tested it with lamps by burning it?—A. Yes, sir.
Q. And does your oil make as good a test as theirs?—A. Our
shows up in some results equally as well as the Standard's, and
some cases better.
Q. You have had some experience before with oil containing
phur?—A. Yes, sir.
Q. Where?—A. Texas.

Cross-examination by Mr. CRAWFORD:

Q. How long have you been in your present position,
Setzler?—A. 8 months.
Q. Prior to that time where were you employed?—A. With
Lake Carriers Oil Company, Coraopolis.
Q. Coraopolis, Pennsylvania?—A. Pennsylvania.
Q. Then, is your experience in refining Lima crude confined to
8 months that you speak of?—A. 8 months; yes, sir.
Q. When were the tests of which you speak made?—A. W
tests?
Q. You spoke of testing your oil in comparison with oil m
by the Standard Oil Company?—A. Do you mean burning tests?
Q. Burning tests; yes, sir.—A. We make them from time to ti
Sometimes we make two or three a week.
14133 Q. Where did you obtain the oil which you attribute to
that of the Standard Oil Company?—A. Bought it from
grocery man.
Q. You have only the grocer's word for it being Standard
Company's oil, have you?—A. Yes, sir.
Q. It looks just the same as any other, does it not?—A. Sometim
it does.
Q. Do you use there what is known as the Canadian process
distillation?—A. Canadian process?
Q. Yes.—A. Well, we use Litharge's process.

Q. What is the name?—A. Litharge.

Q. That is what has been known commonly as the Canadian method, isn't it?—A. Yes.

Q. In using that process is it not a fact that you have to restore a certain amount of sulphur in order to get the lead out of the refined into the bigger part of the kerosene? Do you use flowers of sulphur as one of the final steps?—A. Yes, sir.

Q. So that part of this sulphur which is extracted is really again restored, is it? or some other sulphur, the equivalent?—A. Well, I don't know whether you call it a sulphur to restore.

Q. It remains in the refined oil, doesn't it?—A. The sulphur?

Q. Yes.—A. It comes out as lead sulphide.

Q. Are you a chemist?—A. Yes.

Q. Do you know the per cent of sulphur in your distillate before you treat it with the flowers of sulphur?—A. No, sir.

Q. Or afterwards?—A. Sometimes. Well, yes, on a special run.

14134 Q. What do you mean by a special run?—A. Well, I will correct that. We do know the per cent of surphur before and after.

Q. Why did you say to me that you didn't know it before?—A. Well, because personally I did not make the determination.

Redirect-examination by Mr. KELLOGG:

Q. Now, explain. Do you mean personally?—A. Personally, myself, I did not make the sulphur determination.

Q. You mean it is made there in the manufacture?—A. No, in the laboratory.

Q. The litharge process takes up all the sulphur from the crude, does it not?—A. No, sir.

Q. In the first instance, I mean?—A. No.

Q. Well, explain it?—A. Well, put it all in your agitator and you agitate with litharge.

Q. What do you use the flakes of sulphur for?—A. To remove the litharge as lead sulphite.

Q. The flakes of sulphur combined with the litharge?—A. Yes, sir; lead sulphide.

Q. They don't remain in the oil?—A. There are times they do and times they don't.

Q. But very little, I suppose.—A. Very small.

Q. This oil you make is sold right along in the market?—A. Right in the market every day.

Q. Did the Standard's oil that you tested have some sulphur in it?—A. That wasn't tested for sulphur.

Q. What does sulphur do—make a color on the——A. It
14135 makes a slight deposit on the chimney.

Q. Did theirs have the same?—A. Just the same.

Q. Is there some sulphur in the Pennsylvania?—A. Yes, sir.

Q. Does much of the illuminating oil made from Pennsylvani have a little sulphur left in it, or some of it?—A. That is a pret hard question to answer. I do not suppose there is any oil that do not contain sulphur.

Recross-examination by Mr. CRAWFORD:

Q. Have you ever tested it chemically to find that out?—A. Pen sylvania?

Q. Yes.—A. Yes, sir.

Q. Did you find any sulphur in it?—A. Yes, sir.

Q. How much?—A. Well, I would have to answer from memor I think it was something like 2/1000 of 1 per cent.

Q. You mean 1/2000 of 1 per cent?—A. 2/1000 of 1 per cent.

Q. 2/1000 of 1 per cent?—A. Yes, something like that.

Q. How much sulphur is there in the refined oil that you mak from the Lima crude—the finished?—A. It runs about 2/10 of 1 pe cent.

Q. 2/10 of 1 per cent?—A. Yes. It runs as low as 1/10 of 1 pe cent.

By Mr. KELLOGG:

Q. 1/10 of 1 per cent or——

Mr. CRAWFORD. Just a moment. Pardon me.

Q. 1/1000, you mean?—A. 1/10 of 1 per cent.

Q. Well, that is 1/1000, isn't it?

Mr. CRAWFORD. No, not at all. It is 100/1000.

14136 WITNESS. Yes, 100/1000.

Mr. CRAWFORD. He said in one case 2/1000 of 1 per cen and in the other case 1/10 of 1 per cent, which is 100/1000.

14137 FRANK B. FRETTER, sworn in behalf of petitioner, in re buttal, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Are you in the oil business, Mr. Fretter?—A. Yes, sir.

Q. For how long have you been?—A. 22 years.

Q. Where did you commence in the oil business?—A. The fir 2 years of the 22 I was bookkeeper for the Merchants Oil Compan a jobbing house of Cleveland, Ohio.

Q. When did you first become connected with any concern man facturing illuminating oil out of Lima crude?—A. As near as can recollect, in 1888. I was bookkeeper for the Peerless Refini Company, which had just completed and opened a refinery at Fin lay, Ohio.

Q. Was that company then manufacturing illuminating oil out what is known as North or South Lima crude or both?—A. It w then refining South Lima crude.

Q. And selling the refined oil in the market?—A. Selling the re fined oil on the market in competition with other oils.

Q. You are not an oil expert, I suppose? You are not a chemis anything of that kind?—A. No, sir.

Q. And you have nothing to do with the manufacturing department?—A. No, sir.

Q. That refinery started about when? About 1888?—A. About 1888 as near as I can recollect.

Q. How long was it manufacturing at Findlay from South Lima crude?—A. Until 1896. I, however, was not with them all that time.

14138 Q. You know in a general way?—A. I know positively, because I left them two years after I was with them, and went with the National Refining Company, and ever since, to a greater or less degree, we have purchased oil made from Ohio crude made by the Peerless Refining Company, by the Craig Oil Company of Toledo, by the Paragon Refining Company of Toledo, and the Manhattan Oil Company—which sold out to the Standard some years ago. Up until the time they sold out we bought a great deal of oil from them made from Ohio crude.

Q. Where did the Manhattan have a refinery?—A. At Galatea, Ohio, right near Findlay.

Q. Prior to the time that the Peerless Refinery was started at Findlay, was there any other refinery using South Lima Crude that you know of? I mean, the Eagle, or——A. I couldn't say positively as to the South Lima. Previous to the Peerless the Eagle Consolidated had a refinery in operation at Lima and were refining South Lima crude.

Q. About what year was that, if you recollect?—A. As near as my memory will serve, that was in 1887; perhaps a little earlier. I think they ran for a couple of years before they got into trouble.

Q. Almost the first refinery to use the South Lima crude, then, was the Eagle, was it?—A. To my recollection, the Eagle was the first concern that I ever heard anything of that refined Ohio crude.

Q. How long has the National Refining Company been refining oil from South Lima and North Lima and selling it in the market?—

14139 A. The National Refining Company bought the refinery located now at Findlay in 1897, to the best of my recollection, and from that date on has been refining; first we started in to refine the South Lima crude, but the Standard very kindly moved the imaginary line (dividing the North Lima from the South) farther south, so that they put us in the North Lima crude; made us pay 5 cents a barrel more for the crude.

Q. Then, since 1897, you have been manufacturing and selling crude that came from what was formerly the South Lima field?—A. Yes, sir, and we are running some north of that, got over where the imaginary line used to be, with the pipe line, and we are gathering some of that, and mix it all up, and have been refining Lima crude, North and South Lima (used to be, now is North Lima), and have been selling it on the market ever since.

Q. In competition with the Standard's—made from the same oil?—A. Yes, sir; in competition with everybody.

COPY BOUND CLOSE IN CENTER

Q. Do you know whether it is as good oil as the Standard manufactures?

Mr. CRAWFORD. The question is, Do you know?

A. I know; yes. I won't say I know unless I do. I know from tests that I have made by taking their oil and burning it in a lamp, as compared with ours. I wanted to see how our marketing department would show up with theirs—the complaints if there were any; whether our oil was all right or not. Wherever I made those tests, our oil was equal or superior to that of the Standard.

Q. That is what you call a burning test?—A. That was only by the burning test.

Q. Is that a common test with the manufacturers?—A. I
14140 think that is the best way—to put it in a lamp and make it burn. You have got to make the tests that please the public.

Q. Is that a pretty thorough test? How long do you burn those lamps, sometimes, to make the tests?—A. Sometimes we burn them two or three days running and sometimes a couple of hours, wherever I have made the tests. It depends on how much time I have.

Q. Is that a common thing to do, to make such tests in the oil business?—A. Yes, very common. The Standard run around and equip themselves with lamps, and test them everywhere, and they have them buy our oil and make the tests with it.

Q. When did what is known as the Lima field first become a large producing field? Do you remember whether it was in 1886, 1887 (along there), or 1888?—A. I was a boy then. My recollection is that it was 1886, somewhere in there. I didn't know much about crude when I was with the Merchants Oil Company.

Q. You were simply bookkeeper?—A. Yes.

Cross-examination by Mr. CRAWFORD:

Q. How old are you, Mr. Fretter?—A. 44.

Q. Were you born in 1864?—A. 1864. I went to work when I was 9 years old—if you want to know.

Q. Well, I am glad to know it. It is not of any material importance.—A. I started in pretty young.

Q. I am glad to know that you have been so successful, but it does not reflect any light upon this controversy.

Mr. KELLOGG. I don't know as his age does, either—but you asked for it and have got it.

14141 Mr. CRAWFORD. It may.

Q. Where were you employed in 1886?—A. I think about that time I was just starting in with the Merchants Oil Company.

Q. Where was that?—A. At Cleveland, Ohio.

Q. How long did you remain there?—A. About 2 years; perhaps a little over.

Q. Until 1888?—A. About 1888.

Q. And then you went where?—A. With the Peerless Refining Company.

Q. At what place?—A. At Cleveland, Ohio; refinery at Findlay, Ohio.

Q. Where were you personally employed?—A. At Cleveland, Ohio.

Q. How long did you continue there?—A. I think a trifle over two years.

Q. That would carry you down to 1890?—A. Just about. Right in there.

Q. What was your next employment?—A. National Refining Company.

Q. Where?—A. In Cleveland, Ohio.

Q. And that continued down to 1906?—A. With the National?

Q. Yes, sir.—A. Ever since. I am still with them.

Q. Where was the Eagle Refinery situated, that you spoke about?—A. At Lima, Ohio, to the best of my knowledge.

Q. Were you ever in the refinery of the Eagle Company?—A. No, sir.

Q. Did you ever see it?—A. No, sir. General knowledge.

Q. What knowledge have you that it was in existence in 1887?—A. I have seen the Eagle Consolidated letter heads; I have addressed letters to them. And it was general knowledge. Everybody knew that they had a refinery at Findlay.

14142 Q. Are you entirely certain about that year—1887?—A. Not positive; no, sir.

Q. Might it not have been 1888?—A. My recollection is that I went with the Peerless in 1888, as I stated, and I think it was previous to that that the Eagle consolidated. I may be mistaken on the dates, but it was around that time.

Q. It might be 1888?—A. It might be.

Q. Whatever the date was, you only know from what you were told as to what they were doing in the refinery, of course?—A. Certainly, only what I was told. I knew they had a refinery there from their letter-heads and—

Q. You don't know what crude they were using?—A. Only what I was told.

Q. And you don't know what success they were having in refining that crude, except as you were told?—A. No, as far as the Eagle is concerned.

Q. I am speaking of the Eagle. Where was the Craig Refinery situated?—A. At Toledo, Ohio.

Q. The crude that they used came from the northern part of the field, did it not?—A. I don't know. The Standard makes delivery of crude to them; I don't know that except from general knowledge.

Q. Where did you get the refined oil which you attribute to the Standard Oil Company and with which you made the tests that you have spoken of?—A. I tested it at various cities.

Q. The question is where you got it.—A. I am coming to it, if you please. Various cities, from different grocerymen, and different people who handled the Standard Oil Company's oil.

14143 Q. The only knowledge you have of it having come from the Standard Oil Company is what they told you, is it not?—A. Oh no. I have seen them deliver it from the tank wagons.

Q. You haven't seen the tank wagons deliver the very oil that you bought?—A. I have seen them put it into the tank, and then have gone in and got it out of the tank.

Q. Immediately afterwards?—A. Immediately. I have been there when they delivered in some instances.

Q. You were there watching the operation, were you?—A. No; I was there soliciting the man's business.

(An adjournment was here taken until the morning of Thursday, January 14, 1909, at 10.30 o'clock.)

14144 ROOM 508, CUSTOM-HOUSE, NEW YORK CITY,
Thursday, January 14, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg; on behalf of the defendants, Mr. F. L. Crawford, Mr. W. Cleveland Runyon.

A recess was taken until 2 o'clock p. m.

FORREST M. TOWL, recalled, testified as follows:

Mr. KELLOGG. The Government offers in evidence petitioner's Exhibits 965 to 976, inclusive. It is stipulated by counsel that said exhibits or duplicates thereof may be filed in this cause to be used in any hearing or argument thereof in any court, without printing the same in the record.

By Mr. KELLOGG. Two diagrams were marked "Petitioner's Exhibit 990" and "Petitioner's Exhibit 991," respectively.

Q. Please state what Exhibit 990 is.—A. It can best be described, I think, as a graphical index of the pipe lines, showing the size of the lines and the distances between them, from Griffith, Indiana, to various terminal points.

Q. Is it a condensed statement or diagram of all of the trunk lines of the Standard Oil companies from Griffith, Indiana, on the west to Unionville, New York, Centerbridge, Pennsyl-
14145 vania, Philadelphia, Pennsylvania, Marcus Hook, Pennsylvania, and Fawn Grove, Pennsylvania?—A. Yes, sir.

Q. Is it a condensed statement of previous more elaborate statements put in evidence, of the same lines, containing the principal information that is contained on the others?—A. Yes.

Q. The figures 19.99, near Griffith, show the distance from Griffith to the point where there are three lines instead of two, do they not?—A. Yes, sir.

Q. And each set of figures over the map shows the length of the lines between the various vertical lines at the places therein designated?—A. Yes, sir.

Q. The miles and fractions of miles?—A. Yes, sir.

Q. The sizes of the pipes are indicated by the index at the bottom, are they not?—A. Yes, sir.

Q. 4, 5, 6, 8, and 12, respectively?—A. Yes, sir.

Mr. CRAWFORD. That is interior diameter, is it not?

WITNESS. Interior diameter; yes, sir.

Q. Is that the way lines are usually expressed—interior diameter?—A. Of that size. Sometimes not in 12. Sometimes 12 is outside or inside.

Q. The place marked "Whiting" indicates the branch line from Griffith, on the main line, to the refinery at Whiting, Indiana, does it not?—A. Yes, sir.

Q. The pumping stations are indicated by what?—A. Heavier vertical lines with the name of the station. In some cases, the more important stations, where there is tankage, the name of the station is set forth in an oblong.

14146 Q. The lighter vertical lines that are not named do not represent pumping stations?—A. No, sir.

Q. Take the first one, at the end of the 19.99 miles, where the two pipes meet three pipes, there is a light vertical line. That simply means the end of the line containing two pipes and the beginning of the three, doesn't it?—A. And the connections located at that point.

Q. Is that what these light vertical lines mean wherever they appear on this map?—A. No, sir; not in all instances.

Q. Except state lines, you might say?—A. Except state lines and the small dotted vertical lines, which represent the approximate location of the incoming gathering lines, and the fine dotted lines coming in at various stations represent incoming gathering lines; some of them are on a diagonal.

Q. Are all the incoming gathering lines represented on this map?—A. I do not think so.

Q. Take it at the station Catatonk; there I notice four lines meet four lines, but they are not continuous. Please explain why that is.—A. At the pumping stations, and at some points along the line, connections are put in, so that the lines are not continuous.

Q. Are those pipes so that you can connect any one with any other one, by gates or valves, or whatever you call them, or through tanks?—A. In general, they are.

Q. Generally speaking, where three lines meet four, or four converge into three or a different number of lines (I mean

14147 pipes, meeting each other), are they so arranged that there are gates or valves so that you can turn one into another, either through tanks or otherwise?—A. "Or otherwise;" not through tanks.

Q. One way or the other, I mean, you can? You can turn them into each other, or you can turn them into the tanks——A. Into each other through the tanks?

Q. That is, if three pipes, say, come into tanks at a pumping station, you can pump out of those tanks into any one of the lines

beyond, that you wish, can you?—A. This does not show the pipes at the stations, going to the tanks. In general, there are not as many lines going to the tanks as there are shown coming into the station.

Q. What I wanted to get at is this: Where there is a change from 3 to 4, 4 to 3, or 3 to 6 lines or pipes, how do you connect them so that you can use any one, two, three, or four of the pipes beyond?—A. By opening valves.

Q. Then the valves are so arranged that you can connect any one pipe with the pipe in the next section, or with more than one, if you wish?—A. With some of the pipes in the next section. I would not say that they are arranged so that you can connect it with any one.

Q. Are they usually arranged so that you can connect them with any one?—A. It is rather difficult to answer that. There are complicated connections at the stations.

Q. How do you arrange it so that at stations or connections where there is a change in the number of pipes you can select the
14148 pipes through which you wish to pump beyond?—A. By opening valves.

Q. Where there is a station and the oil goes into tanks, are those tanks so connected that you can pump into any one of the lines beyond that you desire?—A. Yes; you can pump into any one of the lines beyond, but you can not pump from any one tank into any one of the other lines and divide them off that way. The connections mix up and often interfere with the taking of it through the same pipe or going through the same set of connections.

Q. Then if you wanted to use certain other pipes beyond you would pump into some other tank, I suppose?—A. Yes.

Q. Is it not a fact—take it from Preble to Cygnet—that you have, there at least, four lines all the way?—A. Yes, sir; four pipes all the way.

Q. And in some places more than that; I guess at all places more than that; at least five pipes all of the way. [Witness points on the diagram.]

Q. Yes; there is one place where there are only four pipes—a little ways. Now, into how many systems of pipes or groups do you at times divide that in pumping oil?—A. Between Preble and Adgate I believe it is possible to divide it into three. I think it has been divided into three at some time.

Q. Hasn't it been continuously for some time past?—A. I don't think so. I think that a good share of the time for some time past it has probably been divided into two.

Q. Hasn't it at times been divided into three?—A. I think it has.

14149 Q. All the way to Cygnet?—A. I do not think so.

Q. Now, for some time past have you pumped any oil westwardly from Preble?—A. No, sir.

Q. The line from Griffith to Preble has been used exclusively for pumping east?—A. Yes, sir.

Q. Kansas oil, or Oklahoma, whatever you call it?—A. Yes, sir.

Q. You call it Mid-continent oil. Illinois oil comes in at Preble, does it not?—A. Yes, sir.

Q. And also Indiana oil?—A. Yes, sir.

Q. From Preble to Cygnet you use a separate system of pipes for the Indiana oil, do you not?—A. I think that most of the time it is going through a small group of pipes in the system, not always the same group, and not always going through. The lines which it goes through are often used for other oil.

Q. That is, alternately?—A. Yes, sir.

Q. First, Lima-Indiana, and then Mid-continent oil?—A. Or Illinois.

Q. But the pipes are so arranged that between there and Cygnet you can have at least two systems and use one for one kind of oil and the other for another, are they?—A. It can be done.

Q. And has been done, hasn't it?—A. It has been done.

Q. Do you know whether you could make three systems between Preble and Cygnet?—A. You probably could.

Q. Do you know whether you have done it?—A. I do not know.

Q. Between Cygnet and Mantua, Ohio, are the lines ar-
14150 ranged so that you have more than one system of pipes?—A. Yes, sir.

Q. How many?—A. I think you could have three; possibly not, on account of the station connection. I do not believe you could have four. There are four lines between all points, but I do not think you could have four without great changes at the stations.

Q. You mean changes in the connections?—A. Changes in the connections and changes in the machinery.

Q. What machinery do you mean?—A. Pumping machinery; the pumps.

Q. You could have three all the way?—A. I think so. I do not know of its having been divided into three.

Q. It has been divided into two, has it?—A. It has been divided into two, and is often divided for some considerable number of days, but then the oil is not continually going through any one section, any one kind of oil. The amounts of oil are not such that it can be handled in that way.

Q. The amounts of oil are not such that it can be handled in what way?—A. The supply is not such that you can make any permanent division of it into regular permanent systems; that is, use one system of lines for only one kind of oil; you would have a very great loss of capacity. Of course, if you wanted to shut down one system for a long time you could do it.

Q. It appears that from the 13th of August to the 6th of
14151 September you were pumping Kansas oil through the system east from Cygnet, for instance, and during that same time,

from the 15th of August to the 25th of August, you were pumping Illinois oil.

Mr. CRAWFORD. I object to that question, because that does not appear. There is nothing in the record at present that shows that, and if the figures which counsel has in his hand are to be used in any way, they should be used by the witness. Let him study the paper.

Mr. KELLOGG. I would be very glad to have him study it. I supposed he was familiar with it.

Mr. CRAWFORD. You have not seen these figures before, have you?

WITNESS. No, sir.

Mr. CRAWFORD. They are not from any records in your possession?

WITNESS. No, sir.

Mr. CRAWFORD. You don't know anything about them, except what appears on their face, do you?

WITNESS. No, sir.

Q. Do you know whether that is a fact—that you were doing that?—A. I do not.

Q. Do you know whether for some months last past, east from Cygnet, Lima-Indiana oil has gone through one set of pipes and Illinois and Mid-continent through another?—A. I couldn't say.

Q. It could be so arranged, could it?—A. It could be so arranged.

Q. Now, at Mantua one line branches off to the north and
14152 goes to Cleveland, does it?—A. Yes, sir.

Q. And one to the south, and goes to what place?—A. It eventually connects through to the east.

Q. You say it connects through and goes to the east?—A. Yes, sir.

Q. Making another trunk line branching at Mantua and running to Marcus Hook, Philadelphia, and Centerbridge?—A. And Fawn Grove.

Q. And Fawn Grove. Is that correct?—A. Yes, sir.

Q. In other words, it branches off to Mantua and goes as far as Greggs?—A. Yes.

Q. Where the Crescent pipe line connects?—A. Yes, sir.

Q. And the Crescent runs to Marcus Hook?—A. Yes, sir.

Q. And another branch goes down to Morgantown?—A. Yes, sir.

Q. Where it connects with the Southern pipe line?—A. East of Morgantown it connects with the Southern line.

Q. And goes to Millway?—A. Yes, sir.

Q. From Millway it connects with the National Transit, one line to Fawn Grove, one line to Centerbridge, and one line to Philadelphia?—A. Yes, sir.

Q. And from Millway to Philadelphia the Southern Pipe Line also has a line?—A. Yes, sir.

Q. Now, the Buckeye pipe line connects with the Northern pipe line at the state line between Ohio and Pennsylvania, as shown on the map?—A. Yes, sir.

Q. But there is no pumping station there?—A. No, sir.

14153 Q. There is no break there at all, is there?—A. No, sir.

Q. The first pumping station east of that is Sampson?—A. Yes, sir.

Q. Between Mantua and Bear Creek how many systems of pipes can you operate—how many separate systems of pipes?—A. I am pretty sure that you could operate two. I couldn't say whether you could operate three or not.

Q. You do operate two, do you not?—A. I can't tell you whether there are two in operation there or not.

Q. Would Mr. Bushnell know more accurately about that, or anybody else in your department?—A. Not in my department. Mr. Bushnell might possibly know; I couldn't tell you.

Q. Between Bear Creek and Kane how many systems of pipe can you operate—separate systems?—A. I think you can operate three. I don't know how many there are in operation, or have been in operation.

Q. From Kane to Olean there seems to be two different lines some distance apart.—A. Yes, sir.

Q. About how far apart are they? Can you give us a general idea?—A. At Olean they go in right close together, but at various places along the route they are several miles apart—I couldn't say how many. They do not follow the same route.

Q. That is near enough. Now, one of them passes through Colegrove, does it not?—A. Yes, sir.

Q. And the other north of there—each having two separate pipes?—A. Each system having two pipes.

14154 Q. And they are operated separately, are they not? Those two systems of pipes?—A. Some of the time. I don't know whether they are all the time or not.

Q. Does one pump pump through all four pipes at the same time?—A. It can.

Q. But usually——A. I can't say what it usually——

Q. But you can operate them separately?—A. Yes, sir.

Mr. CRAWFORD. That is, you can operate them as two systems?

WITNESS. Yes, sir.

Mr. CRAWFORD. Or two groups?

WITNESS. Yes, sir; you can operate them as two groups.

Q. Could you any more than that?—A. I don't know; I hardly think you can. It is a question of connections inside, around the stations and to the tanks and pumps.

Mr. CRAWFORD. It is a question also of the power—the engines and pumps and boilers?

WITNESS. It is a question also of engines and pumps.

Q. Now, at Colegrove you stated it branches off and joins the National Transit line, Pennsylvania division, from Colegrove to Millway?—A. Yes, sir.

Q. And much of the way that is only a single line?—A. Nearly all the way that is only a single line.

Q. Going east from Olean to Unionville (which is the New York and New Jersey state line) how many separate systems of pipes can

you operate?—A. You can operate two, and possibly three if you disregard connections at the stations, and power equipment, and things of that kind.

14155 Q. But as the connections are now made——A. You can operate two.

Q. And do you operate two?—A. Part of the time.

Mr. CRAWFORD. Is the same thing true, that though you sometimes have it divided into two groups, you do not use each one continuously for the same kind of crude?

WITNESS. Yes, sir.

Mr. CRAWFORD. That is, you shift from one to the other?

WITNESS. Yes, sir.

Mr. CRAWFORD. And then at times you restore them all to one kind of crude, do you not?

WITNESS. Yes, sir.

Mr. CRAWFORD. That is owing to the exigencies of the service?

WITNESS. Yes, sir.

Mr. CRAWFORD. And the kind of crude you have to transport.

Q. Is it not a fact that for some time past you have used one of that system of pipes between Olean and Unionville for Lima-Indiana oil and the other for Mid-Continent and Illinois oil?—A. It depends on what you mean by "some time past." It has not been very long.

Q. Say for a year.—A. No, I don't think so.

Q. Well, several months past?—A. Possibly.

Q. Will you please refer to petitioner's Exhibit 991, which, as I understand it, shows the pipe lines in New Jersey and Maryland of the Standard Oil of New Jersey, does it not?—A. Yes, sir.

Mr. KELLOGG. I believe it is understood that the scale of 991 is different from the scale of 990.

14156 Mr. CRAWFORD. Exhibit 990 is not drawn to any scale.

Q. Oh, it is not?—A. No, sir.

Mr. KELLOGG. Is 991?

Mr. CRAWFORD. I understand that 991 is drawn to a scale.

WITNESS. I understand so. I have not checked it up, but I understand it is drawn to a scale.

Mr. CRAWFORD. But of course it is on a much larger plan than the other.

Mr. KELLOGG. Yes.

Mr. CRAWFORD. That is, the distances or the lengths—the lengths on one and on the other do not represent the same distances.

Q. Exhibit 991 is not on the same scale?—A. No, sir.

Mr. KELLOGG. It is understood that Exhibit 991 was not made on the same plan as 990, through an error of the clerk who drew it.

Mr. CRAWFORD. And that it may be reduced by photography, for the record.

Mr. KELLOGG. And that it may be reduced by photography for the record.

Q. Now, at Unionville the line of the New York Transit meets the line of the Standard Oil of New Jersey, does it not?—A. The line of

the New York Transit goes into the tanks of the New York Transit. The line of the Standard Oil Company of New Jersey goes to these tanks and takes the oil from them.

Q. From Unionville on to Saddle River, how many separate
14157 systems of pipes can you operate?—A. Two, and possibly three. I can not say without more detailed information.

Q. You do operate two, do you not?—A. We have operated two.

Q. And for several months last past have you not used one of these systems for Lima-Indiana oil and the other for Mid-Continent and Illinois?—A. I could not say.

Q. Saddle River is the tank farm, is it not?—A. Yes, sir.

Q. And from there the lines reach various refineries in Long Island and Bayonne?—A. Yes, sir.

Q. From Mantua to Greggs and Ewings you only have pipes so that you can have but one system?—A. One system.

Q. Part of the way it is only one pipe. Can you state whether at Ewings and Greggs and near there the Pennsylvania fields come in through their various gathering lines?—A. In that neighborhood.

Q. So from Ewings east to Morgantown, how many separate systems of pipes can you operate?—A. I can't tell you.

Q. Have you not for some months past operated two separate systems?—A. I don't know.

Q. Is it not arranged so that you can, from Ewings to Morgantown?—A. I don't know.

Q. From Morgantown east to Millway, do you know how many you could operate?—A. You can operate two, and possibly three.

Q. Have you operated two?—A. Yes, sir.

Q. Separate systems, for separate kinds of oil?—A. Two groups of pipes.

14158 Q. Now, from Millway to Centerbridge, part of the way you have four pipes, part of the way three, and part of the way two?—A. Yes, sir.

Q. Of the National Transit's line. Can you operate those in more than one system?—A. You can operate them in two systems, if the pumping equipment at Millway is sufficient. I couldn't say about that.

Q. Referring to petitioner's Exhibit 991, the line of the Standard Oil Company of New Jersey meets the National Transit line at the tanks of the National Transit Company, on the state line, do they not?—A. Yes.

Q. And from there east the line of the Standard of New Jersey, from there to Bayonne, is shown on Exhibit 991?—A. Yes, sir.

Q. Is that so arranged that you can operate more than one system of pipes?—A. No, sir.

Q. Only one. The lower line, from Fawn Grove to Baltimore, on Exhibit 991, joins the National Transit lines at Fawn Grove, as shown on Exhibit 990, does it not?—A. Yes, sir: joins in the same manner as at Centerbridge, through the tanks.

Q. Do you have tanks at every station where you have pumping stations?—A. Yes, sir.

Q. And you pump into tanks and then out of tanks, do you?—A. Not always. We often let the stream go right into the pump and take it right out—have the tank shut off.

Q. But at every station where there are pumps there are
14159 pipes that you can connect through the tanks, if you desire?—A. You could let oil go into the tanks and take oil out of the tanks.

Q. The Prairie Oil & Gas, which is shown on petitioner's Exhibit 964, joins the Indiana pipe line at Griffith, Indiana, does it not?—A. Yes, sir; it runs into the tanks at Griffith, Indiana.

Q. Do you know whether the line of the Prairie Oil & Gas Company is so arranged that it can be operated in more than one system?—A. It can be operated in two.

Q. Is it so operated?—A. No, sir.

Q. Has it been so operated at all, at any time?—A. I do not think so, except when one line—well, that would not be in two systems; one line is often shut down for repairs, and of course all of the oil going through would be going through one system—one line—one pipe.

Cross-examination by Mr. CRAWFORD:

Q. Upon this question of division into different groups of pipes, referring to petitioner's Exhibit 990, and to the other maps of the pipe lines of the defendants, in evidence, you have several times referred to the question of the loss of capacity as resulting from division. By that you mean, I suppose, that there might or would result, in the case of certain divisions, such a reduction in the capacity of the total lines that you could not deliver at the terminus as much as you do now, or as you normally do. Is that what you mean?—A. Yes, sir.

Q. You have referred to the question of equipment. I
14160 wish you would tell us something about what it means to equip a pumping station, in respect to the complexity of the parts, and the cost.—A. You would have to put in an extra pumping station——

Q. No—take any pumping station. My question is general. Describe any one pumping station that you please. I want to get before the court a picture of what a pumping station is, the cost of it, and so on, and then I would take you up on particular points.—A. A pumping station consists of buildings, tanks, boiler-house, pump-house; the boiler-house is equipped with a number of boilers, and the pump-house with a number of pumps to handle the business, and more generally you would have to have a duplicate of at least part of the pumping system, so that in case of accident or break-down from any cause you could have something to run.

Q. In other words, you have a reserve pump, boilers, etc?—A. Yes, sir.

Q. What would one of those pumps, with the necessary connected machinery, cost?—A. The pumps and the connected machinery? You mean pipes connecting to it and going out to the tanks and around, that it is necessary to put in at a station if you want to put in another one, say, at one of these stations?

Q. Yes.—A. Oh, $25,000 or $30,000 you would probably have to spend at one of these stations.

Q. That would be to put in one more pump?—A. One more pump.

Q. With the outfit connected with it?—A. Yes, sir.

Mr. KELLOGG. Would that include the tanks?

14161 WITNESS. No, sir; that would not include a tank. For a tank you would have to add about $10,000 more.

Q. $10,000 more for an additional tank?—A. Yes, sir.

Q. So that if your stations are inadequate, as I understand you to think them to be, certainly at various points but not at all, operating more than two groups of pipes, on the distance from Cygnet to Unionville, it would mean putting into every pumping station an additional pump and additional tank capacity at somewhere near that cost, would it?—A. That is practically what it would mean.

Q. If it were physically possible to divide the system from Cygnet to Unionville into three groups of pipes or three subsystems so that they could be operated, what loss of capacity would that result in? I am not now speaking of the result necessarily as a permanent separation—I will take that up separately. I want to know now, supposing it to be physically possible in respect to equipment and all that (you do not think it is, but supposing that it were) to divide the system from Cygnet to Unionville into three separable subsystems, what loss of capacity would that result in?—A. I have not made figures on the whole, but I have at various sections at different times. It would reduce the capacity from Cygnet through, at least 5,000 barrels a day and possibly as much as ten.

Q. What is the total capacity now?—A. About 85,000.

Q. That is, making it into three?—A. Making it into three.

Q. You say it is 85,000 from Cygnet?—A. 85,000.

14162 Q. Cygnet to Unionville, I mean.—A. But not all the way; no, sir. It starts out from Cygnet at 85, but at Unionville it is only about 40.

Q. I am asking you to assume a continuous system from Cygnet to Unionville, divided into three substations, assuming that you can do it physically and operate it with the machinery and apparatus now in existence. On that supposition I understand you to say that the present capacity of the line is 40,000?—A. Yes, sir; to Unionville.

Q. And that by dividing it into three you would reduce it by at least 5 and possible 10 thousand barrels?—A. Possibly by 10 thousand.

Q. How continuously are these lines in operation?—A. About 360 days in the year.

Q. How many hours in the day?—A. 24 hours.

Q. That is true of all the Standard pipe lines, isn't it?—A. Yes, sir.

Q. They never stop for a minute, do they?—A. Except for a breakdown.

Q. Except for a breakdown.—A. No, sir.

Q. They are as continuous as the sun, are they not?—A. Yes, sir.

Q. Every minute of every day, every day in the year; isn't that so?—A. They either run or some one knows why.

Q. Except in case of an accident, I mean to say.—A. Yes, sir; they are occupied to the full extent and running at full pressure.

Q. At the highest pressure the tanks and pipes will bear;
14163 is it not so?—A. Yes, sir.

Q. And still you are not able to transport the crude oil that is awaiting transportation as rapidly as it ought to go?—A. No, sir.

Q. In other words, the tanks are overtaxed, are they not?—A. Yes, sir.

Q. Even when they are being constantly operated?—A. Yes, sir.

Q. Now then, if you were to reduce the capacity of a 40,000-barrel system—daily capacity—by even 5,000 barrels a day, would not that be a very serious commercial result?—A. It would.

Q. Have you not some small refineries in the East that do not use more than 5,000 barrels a day, or one at least?—A. Yes, sir.

Q. So that the reduction of 5,000 barrels from that total capacity might be measured in the shutting down of one entire refinery; isn't that so?—A. Yes, sir.

Q. Yes—to say nothing of the diminution of the market supply and the other losses that would result from the loss of that refinery; is that so?—A. Yes, sir.

Q. Have you estimated what it would cost to contract additional pipe line with the apparatus to go with it, from Cygnet to Unionville, which would replace the capacity which you would lose if you divided it into three sub-systems? Have you made an estimate of what it would cost to supply new capacity for that?—A. I have made an approximate estimate.

14164 Q. What do you estimate it would cost?—A. Between 2 and 3 million dollars.

Q. So that this supposition of a permanent division into three subsystems along that line involves a loss of capacity which, if represented in new apparatus, new pipe to take its place, means a loss or a new investment of from 2 to 3 million dollars?—A. Yes, sir.

Q. Apart from the loss of the 5,000 to 10,000 barrels on the daily capacity, which would be true if you made this subdivision even for a short time, there is, I judge from what you say, a further loss which would result if the pipes were permanently subdivided. Is that so?—A. I don't just understand that question.

Q. Suppose that this subdivision into three separate subsystems, if it were physically possible to do it and still to operate it, were made permanent, in addition to losing the 5,000 to 10,000 barrels a day is

there any other form of loss which might result?—A. Yes; the supply does not come in any regular manner. The fields go up or the fields go down, and if you make your arrangements to subdivide your lines for the conditions as they are to-day, a month from to-day they will surely be different. And if you set aside a certain part of the line for use for a certain kind of oil, if it were sufficient for that day a month from to-day it will either be too much or too little. That would make a further loss.

Q. That is, what you mean, as I understand you, is assuming that you had this subdivision into three subsystems, there would not always be enough of each one of three different kinds of
14165 crude to occupy a subsystem constantly?—A. Yes, sir.

Q. And that if you were debarred from shifting different crudes to different pipes and each crude was set up to a single subsystem, there would be times when one or the other of the subsystems would be idle?—A. Yes, sir.

Q. That is what you mean?—A. Yes, sir.

Q. And that as long as it lasted would be a subtraction of approximately a third of your entire system, would it not, or something like that?—A. Something like a third.

Q. Now, in so far as you have divided this distance or parts of this distance from Cygnet to Unionville into two subsystems, I understand you to say that you have not made a permanent division of it?—A. No, sir.

Q. And that from time to time you have shifted one kind of crude from what might be called the first subsystem to the second subsystem and back again?—A. Yes, sir.

Q. And also that there have been periods when you threw them all together into one system and used the same kind of crude for a greater or less distance on all the pipes?—A. Yes, sir.

Q. Now, is it not a fact that at the present time, from Cygnet to Olean, your entire system is being occupied by one kind of crude—Kansas? You don't know about that?—A. I don't know.

Q. Well, that is the fact.

Mr. KELLOGG. What is the fact?

Mr. CRAWFORD. That we are using the system from Cygnet
14166 to Olean almost entirely for Kansas to-day.

Q. At any rate, you do know that that thing has happened frequently?—A. Yes, sir.

Q. And is a contingency liable to occur at any time, isn't it?—A. Yes, sir, at any time.

Q. So you have not made a subdivision into two subsystems, in any permanent way?—A. No, sir.

Q. But simply for the convenience of getting your crude forward as rapidly as you can?—A. Yes.

Q. Mr. Kellogg has asked you about Lima crude, and (I doubt not unintentionally) has spoken as if that were a single kind of crude. How is that? Do you transport all Lima crudes as the

same?—A. There are two Limas and Indiana—North Lima, South Lima, and Indiana.

Q. And you do transport those separately, do you not?—A. Yes, sir.

Q. If I understand you right, you do not move any one of those three without having the amount named in the tender of that particular kind?—A. No, sir.

Q. Is it not a fact that North Lima oil costs more than South Lima?—A. Yes, sir.

Q. Is it not a fact that North Lima has very much less sulphur in it, and therefore is much more easily refined?—A. I am not qualified to answer that.

Q. You are not a refiner? At any rate, you know that as a practice you keep them separate in the lines, treating them as if they were different kinds of crude?—A. Yes, sir.

14167 Q. So that substantially you have five kinds of crude that you are moving from Cygnet to Unionville?—A. Yes, sir.

Q. Illinois, Kansas, North and South Lima, and Indiana?—A. And sometimes Pennsylvania.

Q. So that would make, sometimes, a sixth one?—A. Yes, sir.

Q. Now, you were asked on a former occasion (and I think it is pertinent for me to ask you here), whether it had not been the fact that prior to a date, I should say about 1904, but at any rate in earlier years, prior at any rate to the publication of these tariffs, you had not shipped quantities of one or the other of the Lima oils from Cygnet in less amount than 300,000 barrels. When did you first begin to move western crudes (I mean Illinois or Kansas crudes) from Cygnet?—A. I think the line (the Prairie) was connected up into Griffith in 1905.

Q. How about the Illinois crude? That was a little later yet, was it not?—A. That was later.

Q. Prior to the beginning of the transportation of Kansas or Mid-Continent crude, which you say was in 1905—somewhere about that time, any way—what were the only crudes that you moved from Cygnet?—A. North and South Lima and Indiana.

Q. And where did you first come into contact with Pennsylvania crude? At what points geographically, I mean?—A. At Bear Creek.

Q. Where is Bear Creek?—A. In Pennsylvania.

Q. You also, on your previous examination, in answe.
question of Mr. Kellogg as to whether you did not transport
14168 different kinds of oil (I am not quite sure which crudes he spoke of) to the seaboard without mixture, said, I think, that you did "approximately" without mixture, or "with only approximate mixture," or something of that sort. What did you mean by the word "approximately" or "approximate mixture?"—A. Previous to that I had been testifying to various unavoidable causes of the mixing of the oil. I meant that subject to those cases we kept it as separately as we could.

Q. Did you mean to withdraw any statement that you had previously made as to the amount of mixture that resulted in practice

from the transportation of different kinds of crude in the Standard pipes?—A. Not a bit.

Q. You stated to Mr. Kellogg to-day, as I recollect, that on the Southern Pipe Line system, from Morgantown to Millway, you thought it might be possible, or perhaps you said that it was possible, to divide it into three subsystems. Did I so understand you?—A. Yes, sir.

Q. Tell us what the daily capacity of the larger group of pipes is, which is used in the Southern system from Morgantown to Millway, when the division into two systems is made; or you can tell me the capacity of both of them.—A. The larger group of pipes, as they are at present divided, has a capacity of about 37,000 or 38,000 barrels.

Q. And the small one?—A. The smaller group, about 18,000. I can not give you the exact figures.

Q. If you were to subdivide, if it were possible, into three subsystems instead of two, as you sometimes do now, have you estimated what the loss of capacity resulting from that would
14169 be, and if so, what is it?—A. I made some figures on that some time ago. I have forgotten just what it was, but I think it was in the neighborhood of 6,000 barrels, taking things as they stand.

Q. You mean operating the system as three sub-systems, as compared with operating it as one system?—A. Yes, sir.

Q. Well, but as compared with operating it as two systems?—A. I think if we turned it all in together now we would probably get 2,000 barrels a day more; from 1,000 to 2,000 barrels a day more than we are getting.

Q. You mean if it was operated as one system you would get 1,000 to 2,000 more than when you operated it as you say you sometimes do, as two systems?—A. Yes, sir.

Q. But give me the difference between two systems, as sometimes now divided, and the best division you could make into three subsystems.—A. About 4,000 barrels a day.

Q. That is to say, you would lose an additional 4,000 barrels a day?—A. Yes, sir.

Q. And the seriousness of that you have already explained. Have you estimated what it would cost to lay additional pipe and supply equipment from Morgantown to Millway, sufficient to carry an additional 4,000 barrels a day, to make up for the loss which would result in case of this sub-division into three?—A. I have not made any detailed estimate of it, but I should say, roughly, that it would run up into the millions.

Q. Well, it would be a very large sum of money in any event?—A. It would be a very large sum of money; yes, sir.

Q. It would require large additional expenditures at the pumping stations?—A. Yes, sir.

Q. Pipe?—A. Pipe.

Q. Tanks?—A. Tanks.

Q. And fittings of all sorts, would it?—A. Yes, sir.

Q. And labor, of course? (No response.)

14170 Q. In regard to both petitioner's Exhibits 990 and 991 and the other maps in evidence, upon which these two exhibits are based, and also petitioner's Exhibit 964, which is the map of the Prairie Oil & Gas pipe line: They are not to be taken as indicating that the pipes on any particular stretch are straight in direction?—A. No, sir.

Q. They do not at all represent either the profiles—that is, the different grades—nor curves, where they exist, either whether the curves are horizontal or vertical, or any way?—A. No, sir; they do not represent anything except a kind of a——

Mr. KELLOGG. I do not think it will be claimed that that map represents the curves.

Mr. CRAWFORD. No; but I meant to have it in by a question.

Mr. KELLOGG. I guess we all know that.

Q. You referred to certain minutely dotted lines on petitioner's Exhibits 990 and 991, which represented gather ng lines. Those are the main discharge lines of gathering systems, are they not?—A. In general. Some of them are just small.

Q. That is to say, you have not indicated there all the numerous small gathering lines that radiate through the field?—A. No, sir.

Q. You have not undertaken to do so?—A. No.

Mr. KELLOGG. Simply the connections with the main line.

Q. The portion which is named there as the Southwest Pennsylvania pipe line, which runs from—you might tell me the places where.—A. From a little west of Cooks Ferry to a little east of Ewings, between Ewings and Morgantown.

14171 Q. Isn't that connected with a very complicated system of gathering lines?—A. Yes, sir. It is all mixed up in the gathering lines. It is generally considered as a gathering line proposition.

Q. You mean the whole of it?—A. Yes, sir; the whole of it from Greggs to Morgantown; and that part of the Eureka into Morgantown is usually considered as a gathering system.

Q. You stated, I think, that the Prairie Oil & Gas pipe line could be operated as two systems, did you not?—A. Yes, sir.

Q. Two subsystems. Have you ever estimated the loss of capacity that would result from such a subdivision as that?—A. Yes, sir.

Q. What have you found it to be?—A. I have forgotten the exact figures. It is 6,000 or 8,000 barrels a day.

Q. What is the daily capacity of the line now—the total line run as one system?—A. 70 thousand barrels from Humboldt to Ridell, where about 14 thousand barrels go to the Sugar Creek refinery—or a capacity of 14 thousand barrels goes to the Sugar Creek refinery—and it is 56 thousand barrels capacity from there to Griffith.

Q. When you say 56 thousand barrels capacity, you mean that it is capable of delivering at the end of the line 56 thousand barrels a day?—A. Yes, sir.

Q. And you say that that would be reduced by 6 or 8 thousand barrels, if operated as two systems instead of one?—A. Yes, sir.

Q. Mr. Towl, you were present yesterday, were you not, and heard Mr. Martin and Mr. Tarbell testify?—A. Yes, sir.

Q. You heard them testify, did you not, to the transportation by the United States Pipe Line Company of illuminating
14172 oil through a single pipe, which they described as being most of the way 5 inches in diameter and part of the way a little smaller?—A. Yes, sir.

Q. Do you regard the transportation of illuminating oil through such a pipe as was described by those gentlemen, and under the conditions to which they testified, as in any sense presenting the same problem as is presented in the transportation of crude oil?

Mr. KELLOGG. That is objected to as not proper cross-examination.

A. No. sir.

Q. Why not?—A. Beca ıse the oils have very near the same gravity, and, as testified, practically the same viscosity—that is, practically no viscosity at all. Viscosity makes the oils stick and black and mix more.

Q. You mean where there is viscosity it makes them stick?—A. Yes, sir.

Q. And is that viscosity one of the serious elements conducing to the mixture of crude oils?—A. Yes, sir.

Q. In the pipe. What do you say as to the testimony of Mr. Martin that the passage of the illuminating oils left the pipe perfectly clean, and that the oil flowed through the pipe like water? What do you say to that testimony as bearing upon the question I first asked you—whether that transportation of illuminating oil presented in any way the same problem as the transportation of crude oil?—A. It is an entirely different question. Any deductions made from such a line as that would be without value.

14173 Q. You heard them testify as to the transportation of various crudes through a single 4-inch pipe from western Pennsylvania to Marcus Hook, I think——

Mr. KELLOGG. Same objections.

Q. ——a distance of something around 400 miles, did you?—A. Yes, sir.

Q. They named crudes from various small fields. Are not all the fields which they named included under the general head of Pennsylvania grade crude?—A. All they named as handling are regarded as Pennsylvania grade crude.

Q. They all sell at the same price, do they not?—A. Yes, sir.

Q. They testified, substantially, that the crudes which they transported through that pipe were reducible to two—one, Pennsylvania crude, of about 44½ gravity; another Pennsylvania crude, or Bradford crude, I think they called it, of about 41½ gravity. That is a difference of about 3 degrees in gravity. And of the same viscosity. I ask you, in your judgment as an engineer of long standing in pipe-

line transportation, is the problem presented by the transportation of such crudes, with those differences of gravity and likeness of viscosity, through a 4-inch pipe, as described by those witnesses, in any sense the same problem, or does it in any way throw light upon the problem which is daily presented to the Standard Oil pipe-line operators in transporting various crudes which they do transport through their complex system?—A. It throws no light upon the question at all.

Q. Is the problem in any sense the same?—A. In no way comparable.

14174 Q. Would you expect to find very much mixture between two crudes of the same viscosity and very nearly the same chemical composition, and differing only by three degrees of gravity, sent through a 4-inch line at a speed of less than a mile and a half an hour?—A. I would not expect very much mixture, except such as might be incidental to stoppages, or the mechanical equipment, the breaking down of their pumping machinery, or going into the tanks, or a leaking in valves.

Redirect examination by Mr. KELLOGG:

Q. Mr. Towl, isn't there at least four degrees difference in the gravity of the different Pennsylvania oils?

Mr. CRAWFORD. I object to that question as immaterial—no witness on behalf of the Government having testified to any such condition.

Mr. KELLOGG. You just asked him about that same thing.

Mr. CRAWFORD. Your own witnesses testified to a difference of three degrees.

Q. Isn't there four degrees difference between the different grades of Pennsylvania oil—at least that?—A. There is at least four degrees difference.

Q. Didn't Mr. Martin testify to transporting one grade of 41½ and another of 45½?—A. I think not.

Mr. CRAWFORD. No, he did not.

Q. Isn't it true that as between the oil that comes from the Bradford district and the oil that comes from southwestern Pennsylvania there are four degrees difference?—A. I don't think there is that much.

14175 Q. Is it not true that between the oil that comes from the Columbia pipe line and the southwestern Pennsylvania there are four degrees difference?—A. I do not think there is that much difference in the average gravity of the oil.

Q. I mean between some batches of it isn't there at least four degrees?—A. There are some oils in Pennsylvania that are that much lighter.

Q. What is the difference in the gravity between the oils of Oklahoma?

Mr. CRAWFORD. And what?

Mr. KELLOGG. The different oils of Oklahoma.

A. The different oils of Oklahoma?

Q. Yes.—A. I am not qualified to answer that; but I am qualified enough to say that it is more than four or five degrees.

Q. Is not nearly all the great bulk of the Oklahoma oil 32 or better?—A. All that I have seen and tested and known about would average about 32½.

Q. And all from 32 up brings the same price, does it not?—A. I believe so. I have been told so. I don't know.

Q. And it is not kept separate by anybody, is it?—A. I think it is.

Q. Who keeps it separate?—A. I think there are several parties out there who are storing the lighter oil and holding it in their storage tanks waiting for a higher price. I was told by parties connected with some of the companies (I can not name them) when I was in that field looking around, that they were not going to sell that lighter oil at the price of 32½.

14176 Q. Does the Standard Oil keep any oils of 32 or better separate?

Mr. CRAWFORD. You mean the Oklahoma oils, do you?

Mr. KELLOGG. Yes, sir.

A. The Prairie Oil & Gas Company?

Q. Yes, sir.—A. I can not tell you.

Q. You don't know that they do, do you?—A. I don't know. I know that they have got a great deal of oil in storage.

Q. I mean in the transportation, in their pipe lines and in their use in refineries, do they keep it separate at all?—A. They have transported heavier oil in one or two instances.

Q. I am talking about that of 32 or better.—A. I do not think they have made any distinction.

Q. Does anybody down there, any of the purchasers, make any distinction of 32 or better?—A. I believe they do.

Q. Who?—A. Well, I don't know that they put it just that way; but they say your oil has got to come from a certain sand and from a certain district.

Q. Doesn't the Gulf Pipe Line, the Texas Company, and all other companies have the same uniform price—that is, pay the same price for anything above 32 or better?—A. I do not think they pay for anything. They pay for what they take.

Q. The Standard pays the same price for 32 or better, does it not?—A. I believe they do.

Q. You say there is no difference in the viscosity of the Pennsylvania oils?—A. I did not say that—I beg your pardon.

Mr. CRAWFORD. Your witness said that.

14177 Q. Do you know anything about it?—A. Yes, I know there is a difference.

Q. What is the difference?—A. In the oils that he was talking about there was very little difference.

Q. The Southwestern Pennsylvania oil and the oil that comes from the Columbia Pipe Line, is there any difference in those?

Mr. CRAWFORD. I object to that unless he is limited to the crudes which Mr. Martin or Mr. Tarbell spoke about.

A. That is too general.

Q. They transport oil from southwestern Pennsylvania, don't they?

Mr. CRAWFORD. Mr. Martin testified yesterday that there was no difference in the viscosity in the oils transported through his pipe-line.

Mr. KELLOGG. I am examining this witness myself.

Mr. CRAWFORD. You will not examine him unfairly.

Mr. KELLOGG. I will do it just as I please.

Mr. CRAWFORD. You will not do it without my objection being made on the record.

Mr. KELLOGG. Well, enter your objection.

Mr. CRAWFORD. I will. Go on.

Q. Is there any difference between the oils coming through the Columbia Pipe Line and the oils of the Southwestern Pennsylvania?—A. I do not know.

Q. Is there any difference between the Bradford oil and the Southwestern Pennsylvania oil?—A. There is oil in southwest Pennsylvania that is different in viscosity from certain oils that I have handled coming from the Bradford field. There is a difference
14178 in viscosity between the oil from the Bradford field and in practically every other field where I have ever examined oil.

Q. There is a difference in viscosity in the oils in any region, isn't there—some, a little difference?—A. Very little, in the bulk of the oil.

Q. What is the difference in the viscosity between the Lima-Indiana oil and the Illinois oil?—A. I could not tell you.

Q. You do not know that there is any, do you?—A. I know that they handle different. I could not tell you just what the difference is.

Q. Is there any difference in the viscosity of Lima-Indiana oil and Mid-Continent oil?—A. Yes.

Q. How much?—A. I do not know. I can not tell you just how much.

Q. Do you know that there is difference enough to cut any figure in the transportation?—A. Yes.

Q. How do you know it?—A. Because it pumps differently.

Q. It pumps differently?—A. Yes, sir. Viscosity depends more on temperature than anything else.

Q. Yes; but with the same temperature, I am talking about?—A. Just wait a moment. I will tell you just what I was getting at. The Lima oils and the Indiana oils are a great deal more viscous than the Illinois oil in the winter. They are not nearly as viscous as the Illinois oil in the summer.

Q. What is the difference? How much difference?—A. Considerable. So that it is quite a problem.

Q. You say that if the United States Pipe Line can transport oil from the Columbia Pipe Line's field, and the oil from the
14179 Bradford field, and the oil from Southwestern Pennsylvania, and keep them separate, as Mr. Martin testified, that it does not throw any light whatever upon the fact of whether you could do it or not? Is that what you mean?

Mr. CRAWFORD. I object to that question because Mr. Martin testified that he transported two kinds of oil; that one set of crudes was all 44.5, and in addition to that he transported one oil from Bradford, once a month, of 41.5. He did not say that he transported three different kinds.

Q. Well, two different kinds. That throws no light whatever upon the fact of whether you can do it or not, does it?—A. The fact that he pumped two oils of the same viscosity through a small single line throws no light on the question of whether you can pump different kinds of oil of different gravity and different viscosity through a very complicated system of lines many times larger than the system he described.

Q. The Southern Pipe Line is the most complicated system you have got, isn't it?—A. I can not say that it is.

Q. Where is there one equally as complicated?—A. The system between Mantua and Olean, I should say, is just as complicated.

Q. It is?—A. I should say so.

Q. Is just as complicated as the one from Morgantown to Millway?—A. I should say so.

Q. All the way?

Mr. CRAWFORD. He is taking it as a whole. You didn't ask him all the way.

A. I can not compare that at all.

Q. Between Mantua and Bear Creek it is not as compli-
14180 cated, is it?—A. It is quite complicated.

Q. Is it as complicated as the Morgantown-Millway?—A. It is as complicated as certain sections of it.

Q. What sections?—A. The eastern section.

Q. Where is the most complicated part of the system between Mantua and Olean?—A. Between Bear Creek and Olean.

Q. And that is where you could divide it, and do divide it, into two systems—or that is where you divide it into three systems and do divide it into three systems; is not that correct?—A. I said it could be divided into two, and I do not know whether it could be divided into three or not.

Q. As a matter of fact, for nearly a year past haven't you operated the line from Preble to Unionville in two systems?

Mr. CRAWFORD. If he knows.

A. I can not say.

Q. Why don't you know?—A. I have not been in responsible charge of it during that time.

Q. Who has?—A. Mr. Bushnell.

Q. You say to make the Morgantown to Millway line into three systems would run into the millions; is that correct?—A. No, sir; I didn't say that.

Q. What did you say?—A. I said to make it without loss of capacity would run into the millions.

Q. That is what I mean. How many millions?—A. I could not say without figuring it over.

Q. One million?—A. I can not tell you.

Q. Two, or three, or four, or five? Have you any idea at
14181 all? Have you any idea whether it would be $1,000,000 or $5,000,000?—A. I should think it would be in the neighborhood of half that; somewhere in between them.

Q. But you haven't any figures to tell, have you?—A. Not with me.

Mr. CRAWFORD. You cross the Allegheny Mountains on that line, don't you?

WITNESS. Yes, sir.

Q. The United States Pipe Line crosses the Allegheny Mountains, doesn't it?

Mr. CRAWFORD. That is not the question.

Mr. KELLOGG. That is the question I asked him.

Mr. CRAWFORD. No; you were comparing it with that.

Q. I say the United States Pipe Line crosses the Allegheny Mountains, doesn't it?—A. I believe so; according to the maps I have seen of it. I don't know anything about it.

Q. You say from Cygnet to Unionville you think it would cost about $2,000,000 to make it into three systems without loss of capacity?—A. I should think between $2,000,000 and $3,000,000.

Q. That is three times as long as from Morgantown to Millway, is it not?—A. Yes.

Q. How many lines of pipe would you have to add to the Morgantown-Millway line? A. I can not tell you.

Q. And for how long a distance?—A. I don't know.

14182 Q. Then your estimate is rather indefinite, isn't it?—A. No; your questions are.

Q. Do you call an estimate from one to five millions definite?

Mr. CRAWFORD. He said half of that.

A. I said about half of that.

Q. Well, two and a half millions?—A. That would be a fairly close estimate.

Q. What would constitute the cost of that two and a half millions—the items of it? How much for additional pipes?—A. I can not tell you offhand.

Q. How much for pumping stations?—A. From half to three-quarters of a million dollars.

Q. Is that an estimate made from actual computation, or is that merely a guess?—A. That is an estimate made from my knowledge of the stations.

Q. You can estimate very closely what it would cost to make that line into three systems, can you not?—A. I can; yes, sir.

Q. Well, if you are going to testify to it, why don't you be accurate about it and produce the estimates?—A. I did not come here prepared to testify to it. I was not asked to bring that information. I was not consulted as an engineer as to that question.

Mr. KELLOGG. I offer in evidence petitioner's Exhibits 990 and 991.

14183 DOUGLAS S. BUSHNELL, called on behalf of the petitioner, in rebuttal, being first duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your position with the pipe-line systems of the Standard Oil Company?—A. General superintendent.

Q. Of all their pipe lines?—A. Of certain lines—the Indiana Pipe Line Company, Buckeye Pipe Line Company, Northern Pipe Line Company, National Transit Company, New York Transit Company, Crescent Pipe Line Company, Southern Pipe Line Company, and Eureka Pipe Line Company.

Q. And the Southwest Pennsylvania lines?—A. No, I haven't charge of that.

Q. Well, as far as the trunk line was concerned?—A. Well, that system is a gathering system.

Q. The pipes shown on this map are not, in themselves, gathering lines, are they? They are through trunk lines?—A. They are all a portion of a gathering line system.

Q. Yes; but are they in fact—the pipes themselves shown on this map—trunk line pipes?—A. Do you mean used exclusively for trunk line oil?

Q. Used for trunk line oil passing through.—A. Exclusively or partially?

Q. Exclusively.—A. I do not think they are used exclusively.

Q. Isn't it a fact that from Mantua to Greggs and Morgantown, you use that line, including the South Pennsylvania pipe lines

14184 shown on this map as a thorough system of pipe lines?—A. There is certain oil passing through this portion of the lines [indicating on map]. As to what portion of the Southwest it goes through, exclusively, I do not know.

Q. It has to go through the Southwest if it reaches Morgantown, does it not?—A. It does.

Q. And it does go through the Southwest?—A. It does.

Q. And they are used then—those lines shown on this map—as trunk lines, are they not—A. In so far as they carry that oil.

Q. And the gathering lines that come into those trunk lines connect at stations, do they not?—A. Not entirely.

Q. Do you mean to say that they are gathering lines that come right into those trunk lines between stations where——A. Yes, sir.

Q. They have valves to shut them off, have they not?—A. They have.

Q. Where?—A. Right there [indicating].

Q. Well, between Ewings and Cook's Ferry, or the Ohio-Pennsylvania line, there are no gathering lines going into the main line except at stations, are there?—A. There are none shown on that map.

Q. Do you know whether there are any or not?—A. I do not.

Q. You say at one place here between the Pennsylvania state line and Morgantown the gathering line comes in at other places than stations?—A. Yes, sir.

Q. Does it come into all of the pipes?—A. I could not tell you that.

Q. How are they shut off, so that when you wish to use
14185 those lines as through lines or trunk lines, the oil will not come in from the gathering lines?—A. We gauge each valve.

Q. So that you can use these lines from Mantua to Morgantown as trunk lines?—A. They are used for carrying that through oil.

Q. Aren't they used as trunk lines, so that the oil that comes in from the gathering line will not mingle?—A. Yes.

Q. Well, then, they are used as trunk lines, aren't they?—A. I said they were used as trunk lines, but not exclusively.

Q. Are you familiar with the way in which the oil is pumped, and has been for several months last past, from Preble, Indiana, to Unionville, New York?—A. In a general way, yes, sir.

Q. Hasn't that entire system of pipes from Preble to Unionville been used for about a year as two systems, or three in some parts?—A. No, sir.

Q. Hasn't it been used as two?—A. No, sir.

Q. Isn't it a fact that you have used all parts of the line as two systems?

Mr. CRAWFORD. Permanently, do you mean?

Q. Answer the question as I asked it.

Mr. CRAWFORD. Well, you don't want to catch this witness?

Mr. KELLOGG. No; I am not going to.

Q. At times haven't you used it as two systems all the way through?—A. Oh, yes, at times; yes, sir.

Q. Hasn't that been continuous for several months last past?—A. By continuous you mean without intermission or change?

Q. No, not necessarily without intermission. I mean that you
14186 have, for instance, pumped Lima-Indiana oil through one of the systems and at the same time used the other system for Mid-Continent oil and for Illinois oil.

Mr. CRAWFORD. Do you mean continuously?

Mr. KELLOGG. Yes; continuously for the last——

A. No, sir.

Q. You have not?—A. No, sir.

Q. It has been you custom to pump oil, the Lima-Indiana oil, following it by the Mid-Continent oil; and then the Mid-Continent oil, following it by Lima? That is the way you do it, is it not?—A. Now, wait a minute. You asked me if for the last three years this line had not been divided continuously in two systems. I say, no, sir.

Q. Well, for three months preceding December 1st, has it not?—A. I could not tell you that.

Q. You don't know?—A. No, I do not remember. I see the reports, but I do not recall that in particular.

Q. You do pump oil, and have for years, to the seaboard—Lima-Indiana oil—and keep it separate from Pennsylvania oil, and keep

it separate from Illinois oil, and keep it separate from Mid-Continent oil, do you not?—A. We pump the oil in batches. We can not keep it separate where it comes in contact with other grades of oil.

Q. You mean you can not, to the barrel, keep it separate?—A. No, sir.

Q. But you do not mean it all mingles?—A. Oh, no; I do not mean it all mingles.

Q. Then why didn't you say so?

Mr. CRAWFORD. Because you didn't ask him.

A. Because you did not ask me.

14187 Mr. CRAWFORD. You can not keep it separate to the thousand barrels, can you?

WITNESS. No.

Mr. KELLOGG. You wait until I get through.

Q. Take from Olean east on the New York Transit's line, from November 14, 1906, to November 30, 1908: is it not a fact that you used the New York Transit's line, one part of it, for Lima-Indiana oil, and the other part for other kinds of oil?—A. Continuously during those periods?

Q. Yes, sir, continuously.—A. I can not answer that positively, but I do not think we did, exclusively.

Q. Well, I show you a statement made out by Mr. Pilkington, and ask you to look at that, look at the dates, and state whether it is not a fact that you used it continuously?—A. I am not familiar with this statement, and when I answer your question I do so from my recollection of the reports that came to me during that period. I am not familiar with this statement.

Q. Well, assuming this statement to be correct. I suppose it is.—A. Will you please read the question.

The question was read by the reporter as follows:

"Q. Take from Olean east on the New York Transit's line, from November 14, 1906, to November 30, 1908: is it not a fact that you used the New York Transit's line, one part of it, for Lima-Indiana oil, and the other part for other kinds of oil?"

Mr. KELLOGG. Change that date to June 12, 1907—since

14188 June 12, 1907. Now you may answer.—A. As I recall the records which came to me, this was not the fact.

Q. Well, there is only one or two short periods of a few days where there was any——A. I cannot answer that from memory.

Q. How do you keep these records, Mr. Bushnell?—A. I do not keep those records at all.

Q. Who does keep them?—A. Mr. Pilkington.

Q. How does he get them? He does not go out on the line and get them himself? Who sends them to him?—A. He gets reports from the field.

Q. From whom?—A. The operators, whoever they may be.

Q. For instance, on one of these statements here it appears that from October 13th to November 14th you transported Indiana oil in

1906. Now, how does he know you transported Indiana oil from October 13th, 1906, to November 14, 1906?—A. I do not know that of my own knowledge.

Q. Who sends him the information?—A. The operators who may be handling the oil in the field.

Q. Who has charge of the operators? Under whom do they work?—A. They would work under instructions from Mr. Pilkington.

Q. Are the operators along the line under his direction?—A. As to the running of the oil.

Q. Then you don't know how he gets that date of October 13, 1906?—A. No, sir.

Q. Or November 14, 1906?—A. No, sir.

Q. Or from whom he gets it?—A. No, sir; not in that case.

Q. Or in any of the cases where he gets the information?—A. Except broadly, that he gets it from the operators.

14189 Q. Do you have your men operating a line under two supervisions—yours and Mr. Pilkington's?—A. The operation of the line is in my charge.

Q. Is Mr. Pilkington under you?—A. The giving of the running orders, as to the running of the oil, is under Mr. Pilkington's charge.

Q. Is he an employee of yours, under your direction?—A. No, sir.

Mr. CRAWFORD. Mr. Pilkington is the traffic manager, practically, is he not?

WITNESS. Practically.

Q. And you are the general superintendent?—A. Yes.

Q. I wish you would look at those papers again and see if you did not make a mistake from June, 1907—if those dates are not continuous without a break.

Mr. CRAWFORD. It seems to me, Mr. Kellogg, that you had better have those papers explained by the officer who has produced them.

Mr. KELLOGG. I know; but this gentleman has sworn they did not do that.

WITNESS. No, sir; no, sir. I said to the best of my knowledge and recollection of the reports that come to me we did not do that exclusively.

Mr. CRAWFORD. I object to the interrogation of this witness in regard to the papers produced by counsel which are not yet in evidence and have not yet been explained by the officer who prepared them; and this witness states that he knows nothing about the papers. It is not a fair——

14190 Q. Then you do not know whether those two lines have or have not operated separately continuously for months, do you?—A. I have testified that from my recollection of the reports of the operation of the lines that come to me they have not been operated absolutely and continuously in two systems.

Q. Well, have they generally?—A. I have not prepared these reports and do not know what is in them.

Q. Have they generally been operated as two systems for several months?—A. They have, generally.

Q. Generally, then, for nearly a year you have transported Lima-Indiana oil from Indiana and Ohio to New York Harbor through separate lines from the others, have you not?—A. Yes.

Mr. CRAWFORD. Do you mean that you have never shifted from one to the other?

WITNESS. I mean to say that a portion of the lines has been used for that oil; not exclusively.

Q. That is perfectly practical, is it not, in keeping the oils separate, to do that?—A. To set aside certain pipes to be kept for those oils?

Q. No; to do it as you have done it.—A. We have been able to do it.

Q. Then you do not have charge of the running of the oil?—A. I do not.

Q. And you do not know as to how it is done, except in a general way?—A. General knowledge; that is all.

Q. Your operation is the physical operation?—A. The physical operation.

14191 Mr. KELLOGG. I would like to excuse Mr. Bushnell, and perhaps recall him after I have Mr. Pilkington on the stand—that is, if you are willing that I should do that.

Mr. CRAWFORD. I am not technical about it, Mr. Kellogg.

14192 WILLIAM W. PILKINGTON, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Mr. CRAWFORD. Now, Mr. Kellogg, will you not have this witness now identify the papers that he has produced. If you do not want to put them in evidence they can be marked for identification, so that we will know what we are talking about.

Mr. KELLOGG. Well, you just keep cool, and I will get at that after a while.

Mr. CRAWFORD. No; you will get at it right, or you won't get at it. I object to the use of any unidentified papers that have not been explained, or have not been offered even for identification.

Q. What is your occupation with the Standard oil?—A. I have charge of the oil books, oil accounts.

Q. How long have you been in that position?—A. About 26 or 27 years.

Q. You have charge of the shipments of oil through the pipes?—A. Some of the lines.

Q. What lines?—A. The Indiana Pipe Line, the Cygnet division of the Buckeye Pipe Line Company, the Northern Pipe Line Company, the New York Transit Company, the Southern Pipe Line Company, the Crescent Pipe Line Company, the Pennsylvania division of the National Transit Company, and also the Millway and Centerbridge division, and the Fawn Grove branch. I keep the oil accounts of those.

14193 Q. Do you have charge of the pipe lines from Unionville, New York, to Bayonne and Long Island?—A. No, sir.

Q. Do you have charge of the pipe lines from Centerbridge, Pennsylvania, to Bayonne?—A. No, sir.

Q. You have charge of the Fawn Grove branch down to Baltimore?—A. No, sir; from Millway to Fawn Grove.

Q. How long is it since you have had charge of those lines from Unionville to Centerbridge and from Fawn Grove?—A. 1906.

Q. Prior to that time you had charge of those lines with all other lines east of Griffith, Indiana, hadn't you?—A. Those that I named.

Q. Those are all the lines there are—trunk lines?—A. There was the Lima division of the Buckeye Pipe Line Company and the Southwest, Eureka, and——

Q. Well, I mean all the main trunk lines running east?—A. Yes, sir.

Q. You had charge of them all, hadn't you?—A. Yes, sir.

Q. When you speak of the Lima division—that is a branch off to Lima, Ohio, is it not?—A. I think so; yes, sir.

Q. But you had charge of all the main trunk lines——A. Yes.

Q. —— from Griffith, Indiana, to the seacoast, hadn't you?—A. Of the moving of the oil; yes, sir.

Q. You ceased to have charge of the lines from Unionville and Centerbridge to the New York harbor, and from Fawn Grove to Baltimore about 1906?—A. Yes, sir.

Q. The latter part of 1906, or was it the middle of 1906?—A. I don't remember just the date.

14194 Q. Why don't you have charge of those lines now?—A. I don't know.

Q. You don't know?—A. No, sir.

Q. Was no reason ever given you?—A. No, sir.

Q. Is it not because they were turned over to the Standard Oil of New Jersey?—A. That I do not know.

Q. Is there any different way of transporting the oil now than formerly?—A. Through the oil lines?

Q. Yes, sir; through these lines in New Jersey and Maryland.—A. I do not know.

Q. Who does have charge of that?—A. Who has charge of the moving of the oil?

Q. Yes.—A. I think Mr. Towl.

Q. What Towl?—A. Mr. D. O. Towl.

Q. What is his position with the Standard of New Jersey; do you know?—A. I do not know just exactly what it is.

Q. The oil is transported through the same line and in the same manner now that it formerly was, is it not?—A. So far as I know.

Q. But your jurisdiction ends at the state line of New Jersey and at the state line of Maryland?—A. Yes, sir.

Q. When you are starting a batch of oil from anywhere in the West, how do you get notice of it?—A. The men who have charge at the different points just telegraph me.

Q. Do you give the orders to have it started?—A. In some cases I do; yes, sir.

Q. Who does give them, if you don't?—A. At what points?

14195 Q. Suppose you want 100,000 barrels of Lima-Indiana oil from Preble, Indiana; who gives the order?

Mr. CRAWFORD. Do you ever start 100,000 barrels from Preble, Indiana?

Mr. KELLOGG. Please don't interrupt me.

WITNESS. There is no Lima oil comes from Preble, Indiana.

Q. Well, the Indiana oil, then.—A. I would give Mr. A. C. Beeson the instructions.

Q. To do what?—A. To start pumping Indiana oil.

Q. Do you get notice of the exact day, or hour, in which that oil is started to be pumped?—A. Usually; but we get telegrams stating the amount pumped each day.

Q. How do you know exactly the time occupied—the days and hours—in pumping that oil?—A. By report from the station engineers.

Q. Do you get that exactly in hours, or approximately, or in days?—A. Generally the time in hours and minutes of the day.

Q. So you know how long Indiana oil is being pumped through certain pipes, do you?—A. From the reports I get; yes, sir.

Papers marked "Petitioner's Exhibits 992–A, B, C; 993; 994; 995; 996; 997; 998; 1000; 1001."

Q. I show you petitioner's Exhibit 992–A. Please state what that is.—A. That is oil that has been pumped from Preble east into Ohio, and then from that point pumped in batches to all points in the East. Possibly we might be pumping Illinois oil from Cygnet east for all sorts of periods—probably for a month or six weeks—and as that is pumped forward to certain points, part of the stream is

14196 diverted and goes south, part of it comes on further east through the other lines to Bear Creek and then to Kane, and some of that batch is pumped over to Colegrove and comes down the lines of the National Transit Company's Pennsylvania division, and part of it is pumped from Kane to Olean, and part of it is pumped from there to Buffalo, to a point down the New York line.

Q. That does not answer my question. I want to know how far this table, which is marked "992–A," shows the transportation of that oil—so that we can separate the tables. Does that mean from Preble to Cygnet?—A. No; that means only the oil that is pumped from Preble station east into Ohio.

Q. Well, 993 starts at Cygnet, does it not?—A. Yes, sir.

Q. Does 992–A show the oil pumped from Preble to Adgate?—A. Yes, sir.

Mr. CRAWFORD. The Illinois, you want?

Q. The Illinois oil?—A. Yes, sir.

Q. From Preble to Adgate?—A. That is it.

Q. Then, 992–A shows the Illinois oil pumped from Preble to Adgate, does it?—A. It shows the pumping from Preble to Adgate.

It is either the pumpings or the receipts at Preble which come forward, anyhow.

Q. But necessarily if it starts at Preble it goes to Adgate?—A. Yes, sir.

Q. So that it does necessarily show the transportation between Preble and Adgate?—A. Yes, sir.

Mr. CRAWFORD. Of Illinois?

14197 Mr. KELLOGG. Of Illinois oil?

WITNESS. Of Illinois oil.

Q. Now, for instance, take the first item: date pumped, from January 7, 1907, to January 8, 1907. That means you were pumping Illinois oil to the amount of 59,305.09 barrels of an average gravity of 33.2 degrees?—A. Yes, sir.

Q. How do you get that date of January 7th to January 8th?—A. That was wired me from Preble station; telegraphed to me.

Q. That means you were continuously pumping the Illinois oil into that pipe at Preble station from January 7th, 1907, to January 8th, 1907, does it?—A. Yes, sir.

Q. And it does not show the exact hours of the day, or anything of the kind?—A. The telegram?

Q. No; this report.—A. No, sir; it does not.

Q. Take the last item, from March 16, 1907, to November 30, 1908—a year and a half. You were continuously pumping Illinois oil into that line from Preble to Adgate, were you?—A. Yes, sir.

Q. Into one or more of the pipes?—A. Yes, sir.

14198 Q. Well, certain of the pipes were set aside and used continuously about a year and a half for pumping Illinois oil?—A. I would not say continuously; not the same pipes.

Q. You can't tell that?—A. We might be using a certain line of pipes here for a time, and then switch over and pump Illinois through some other line.

Q. Yes, but some pipes were used continuously, because you were pumping Illinois oil constantly for a year and a half into that?—A. Yes, but not necessarily——

Q. But not necessarily the same identical pipes?—A. No, not necessarily the same identical pipes.

Q. I know, but you had already that divided into systems, because——

Mr. CRAWFORD. Not necessarily the same number of pipes, were they?

WITNESS. No, not the same number of pipes, and not the same pipes all the time.

Q. I know, but during all of that same time you were also pumping Indiana and Kansas oil, were you not?—A. I won't say the whole time, without I looked over this——

Q. Well, never mind, then. I will withdraw that question. I just wanted to get at what these show. Then, petitioner's Exhibit 992-B shows the dates at which you were pumping from Preble to Adgate of Indiana oil, doesn't it?—A. Yes, sir.

Q. And petitioner's Exhibit 992–C the Kansas oil?—A. The Kansas oil, in the same way; not the same pipes were used or the same number, but——

Q. I understand. Now, from Adgate to Cygnet you do not have the reports of it?—A. No, sir.

14199 Q. Why is that?—A. Well, I don't know. That is the Lima division. It does not come under my jurisdiction.

Q. It is part of the main line to the east, isn't it?—A. Yes, but that is a part of a gathering system there, too.

Q. I know, but you have trunk lines which you use there for trunk lines?—A. I think so.

Q. Yes, sir. You don't know why it does not come under your jurisdiction, do you?—A. Simply that I do not keep the oil books of that division.

Q. Now, the only other breaks in these lines, between there and the Pennsylvania and Maryland State lines, which you do not keep the oil books of, are between Mantua and Morgantown?—A. I wouldn't say Mantua. As far as the State line here this is part of the Cygnet division [indicating]. From Mantua to the State line is part of the Cygnet division.

Q. Then, between the State line of Ohio and Morgantown you don't keep the books?—A. No, sir.

Q. But you keep all other parts of these lines shown on petitioner's Exhibit 990, do you?—A. Yes, sir.

Mr. CRAWFORD. You are quite sure about that, are you? Just look over the map and be sure that that is correct.

WITNESS. Except——

Mr. CRAWFORD. Of course, he means to except what is stricken out here, between Adgate and Cynget.

Mr. KELLOGG. Oh, certainly.

WITNESS. Adgate, Cygnet, the Southwest Pennsylvania pipe lines, the Eureka pipe line, the Macksburg division of the Buckeye Pipe Line Company, the United pipe line division of the Na-

14200 tional Transit Company.

Mr. KELLOGG. I know; but I am speaking of those as shown on this map, and not a division of the National Transit at all. This is a trunk-line map.

Mr. CRAWFORD. You mean to except those which you named?

WITNESS. I mean to except those.

Q. Do you keep the books of all the trunk lines shown on this map, except between Adgate and Cygnet and between the State line of Ohio and Morgantown?—A. By that route?

Q. Yes?—A. Yes, sir.

Q. What do you mean by "that route?"—A. I guess that would cover it—"yes." I assume that you mean these lines that come in here [indicating].

Q. Yes, sir; I mean did you keep the books of these trunk lines shown on petitioner's Exhibit 990, excepting the division between Adgate and Cygnet and the lines between the Ohio and Pennsylvania

State line and Morgantown, on the Southwest Pennsylvania pipe lines, and the Eureka pipe lines?—A. Yes, sir.

Q. Do petitioner's Exhibits 992 to 1001 show the transportation of the oil on all those trunk lines excepting those over which you have not jurisdiction, that you have described? Let me explain that so you will understand it fully.

Mr. CRAWFORD. You mean between the dates mentioned, of course.

Mr. KELLOGG. Yes.

Q. Do those statements show the transportation over all this system, except the parts of the system over which you have not
14201 jurisdiction, to wit, from Adgate to Cygnet, and from State line to Morgantown?—A. I think they do.

Q. In other words, they show the dates, and the amount and grade of oil, and the gravity of the oil so transported?—A. The average gravity.

Q. Average gravity—I understand.—A. Yes.

Q. Now I wish you would look at petitioner's Exhibits 995 in two sheets and 996, and tell me whether it is the fact that between Olean and Unionville, New York, on the New York Transit's line, you were not from June, 1907—some date in June, 1907—pumping Lima-Indiana oil through one system, and other oil through another system, continuously?—A. Do you mean at the same time?

Q. Yes, sir. That is, one system used exclusively for Lima-Indiana, and the other for——A. Not exclusively. There were times when we might switch over—well——

Q. Well, look at that statement [showing a paper to the witness].—A. We pumped oil, Lima oil, through one group of lines, and some other grade of oil through another group, but not continuously all the time.

Q. From Olean to Unionville you were continuously pumping Lima-Indiana oil from June 12, 1907, until November, 30, 1908, were you not?—A. With the exception, as shown, of three days, on the statement there.

Q. With the exception of three days when?—A. There was a break of three days.

Q. What days?—A. From July 27 to 30, 1907; from November 26 to December 4, 1907.

14202 Q. During that same time you were continuously pumping other oil—Kansas and Illinois, were you not?

Mr. CRAWFORD. What do you refer to now—petitioner's Exhibit 996?

WITNESS. Yes, sir.

Q. So that practically you did have two systems during that time between Olean and Unionville, didn't you?—A. Possibly not the same lines all the time.

Q. Do you know which lines they used in the transportation of this oil, yourself?—A. No, sir.

Q. Your statements do not show, and you do not know?—A. No, they do not show, and I do not know.

Q. From what information did you make up these reports?—A. All reports were wired to me.

Q. Do you keep a regular book in which these are entered?—A. Not in that way. We have to pick them out of our oil journals. They are just charged up to that line—whatever the line may be—the total oil is charged up, and we do not pick it out the way you have it here [indicating on a paper].

Q. Then these statements, Exhibits 992 to 1001, were made up by you from your oil journals?—A. By my office force.

Q. And of course there may be mistakes in dates?—A. There may be. They have been checked over pretty closely.

Q. But they have to go through a great many clerks' hands, and they make them up from telegrams, don't they?—A. They are made up from telegrams and then entered in the journals, and they have to check with the reports that we get in the office.

14203 Q. Then you do, in the transportation of Lima oil to the seaboard, do both ways; you run Lima-Indiana oil and follow it with other oil, and you run it into separate pipe lines?—A. And we run one grade in all lines, at times.

Q. In other words, you do it all ways?—A. All ways.

Q. That is, you follow one batch with another, and then you divide the lines into separate systems and use one for one kind and another for another?—A. As the conditions require, yes, sir.

Mr. KELLOGG. I offer in evidence petitioner's Exhibits 992 to 1001.

Mr. CRAWFORD. Those all cover deliveries, do they not?

Mr. DURAND. All cover deliveries, yes.

Mr. CRAWFORD. None of those relates to contamination.

(An adjournment was here taken until the morning of Friday, January 15, 1909, at 10.30 o'clock.)

14204 ROOM 508, CUSTOM-HOUSE, NEW YORK CITY,
Friday, January 15, 1908—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg. On behalf of the defendants, Mr. John G. Milburn, Mr. F. L. Crawford, Mr. Douglas Campbell, Mr. W. Cleveland Runyon.

Papers marked petitioner's Exhibits 1002 to 1006, inclusive.

Mr. KELLOGG. I offer in evidence the following:

A certified and exemplified copy of the petition for relief in injunction in the case of Standard Oil Company, plaintiff, *vs.* William C. Scofield, Charles W. Scofield, Daniel Shurmer, and John Teagle, defendants, marked petitioner's Exhibit 1002;

A certified copy of the answer, marked petitioner's Exhibit 1003;

A certified copy of the affidavit of Oliver H. Payne, marked petitioner's Exhibit 1004;

A copy of the affidavit of Henry M. Flagler, marked petitioner's Exhibit 1005;

And a copy of the affidavit of John D. Rockefeller, marked petitioner's Exhibit 1006.

These exhibits are offered as a part of the cross-examination
14205 of Mr. John D. Rockefeller and Mr. John D. Archbold and also as a part of the case of the petitioner in rebuttal. In so far as these exhibits are offered as a part of the cross-examination of the said parties, it was understood that they might be offered after they left the stand with the same force and effect as if offered before.

The certification of the affidavit of John D. Rockefeller, petitioner's Exhibit 1006, and of the affidavit of Henry M. Flagler, petitioner's Exhibit 1005, is waived by the defendants for the purposes of this case.

Mr. MILBURN. All the defendants, except Oliver H. Payne, object to the affidavit of Oliver H. Payne, on the ground that his statements in the affidavit do not bind them or any of them; all the defendants, including Oliver H. Payne, object to it as too remote, as immaterial, and irrelevant.

All the defendants, except John D. Rockefeller, object to the affidavit of John D. Rockefeller, on the ground that the statements contained in such affidavit made by him are not binding upon them or any of them; and all the defendants, including Mr. Rockefeller, object to such affidavit on the ground that it is too remote, and as immaterial and irrelevant.

All the defendants, except Henry M. Flagler, object to the affidavit of Henry M. Flagler, on the ground that the statements therein contained, made by him, do not bind them or any of them; and all the defendants, including Henry M. Flagler, object to such affidavit on the ground that it is too remote, and as immaterial and irrelevant.

14206 WILLIAM W. PILKINGTON recalled.

Cross-examination by Mr. CRAWFORD:

Q. Mr. Pilkington, you were examined yesterday in regard to the transportation of Lima-Indiana crude from Cygnet and other western points to Unionville. I understood you to say it was not the case that any definite group of pipes in the system had been exclusively used for those crudes. Is that correct?—A. That is correct.

Q. What is the fact as to whether the same number of pipes has at all times been used for those crudes?—A. Not always the same number.

Q. If, for example, on some part of the system there would be four parallel pipes, or four pipes approximately parallel, is it the fact that at some time there have been two of those pipes used for the Lima-Indiana crude and at other times three of them?—A. Yes.

Q. And vice versa, for the Kansas or Illinois crude?—A. Yes, sir.

Q. At the present time what is the fact as to pipes from Olean east to Unionville? How many are being used for one, and how many

for the other?—A. At the present time three pipes are being used for western oil and one for Lima oil.

Q. Some time ago how was it?—A. Some time ago there were two pipes on Lima oil and two on the western oil.

Q. Will you look at petitioner's Exhibits 992A-B-C to 1001, inclusive, and state whether in all cases the shipments that are
14207 mentioned, from the various points, originated at those points, or whether in some cases they originated farther west? In referring to any one exhibit please mention the number of it.—A. Petitioner's Exhibit 992–A, that oil originated at Preble. Exhibit 992–B, Indiana oil, originated at Preble, as far as the trunk line is concerned.

Q. I mean as far as the trunk lines under your control are concerned.—A. It originated at Preble. Exhibit 992–C, Kansas oil, originated at Griffith. It is marked Preble on the exhibit, but it originated at Griffith, as the stream at Griffith was partly pumped east and partly pumped west to Whiting.

Mr. KELLOGG. North to Whiting, you mean?

WITNESS. Northwest to Whiting, from Griffith.

Mr. KELLOGG. That comes from Kansas; it comes from beyond. It does not originate at Griffith.

WITNESS. As far as our trunk line is concerned. Exhibit 993, North Lima oil, originated at Cygnet; Indiana oil, at Preble; and South Lima oil at Lima.

Q. The Kansas oil came from farther west, I suppose?—A. The Kansas oil came from farther west.

Q. And Illinois oil, farther west?—A. And Illinois oil.

Q. Petitioner's Exhibit 994 (in three pages), which shows, by its title, batches received at State Line, and then pumped on to the Northern Pipe Line. The batches shown upon that exhibit of course originated farther west?—A. All originated farther west.

Q. And does it follow that where such is the case the batch which is represented here on your record is of the original size, or made
a part of it, has been diverted?—A. Part of it may have
14208 been diverted in other directions. The batch was probably considerably larger at the west.

Q. Without going into all the details, was the same thing generally true of petitioner's Exhibits 995 and 996, in showing shipments from Olean?—A. On Exhibit 996 the Newcastle oil, the Kansas oil, and the Illinois oil originated further west. The Pennsylvania oil, in 1905 and 1907—I am not able to state whether they originated at Olean, but I am under the impression that October 23rd the Pennsylvania oil originated at Olean.

Mr. KELLOGG. What is Newcastle oil?

WITNESS. I am not prepared to answer that. I think it is some produced in part of the Pennsylvania field.

Mr. KELLOGG. It is a Pennsylvania oil?

WITNESS. It does not come under the head of Pennsylvania grade. It has a different price, I understand.

Q. A lower gravity, isn't it?—A. I believe so.

Q. It is shown here to be of a lower gravity.—A. Yes, sir.

Q. Now, look at petitioner's Exhibit 997. What do you mean by "Eureka?" Eureka crude oil, I suppose it is. What does that mean?—A. My understanding is that it is made up of several grades of Pennsylvania oil from different districts.

Q. Why is it called "Eureka?" Is it because it is delivered at Morgantown by the Eureka pipe line?—A. That is, the Eureka pipe line handles all we deliver to the Southern line.

Q. Without personal knowledge, you understand that what is denominated "Eureka" in your records and in the terminology used by the pipe-line men, is different kinds of Pennsylvania grade
14209 oil which is delivered by the Eureka pipe line at Morgantown?—A. Yes; that is my understanding.

Q. It is in the nature of a mixture or a blend, is it not?—A. Yes, sir.

Q. But all substantially one grade?—A. One grade; yes, sir.

Q. And one gravity?—A. One average gravity.

Q. What is meant by "Morgantown?"—A. I understand that is slightly lighter colored oil.

Q. Of what?—A. Of Pennsylvania grade.

Q. But substantially the same grade of oil?—A. Yes, sir.

Q. For the purpose of determining the amount of shipments complying with the tenders required by the tariffs, do the pipe-line people rate Eureka and Morgantown crudes as different grades of oil or as the same grades of oil?—A. The same grades of oil apply to the tariffs on Pennsylvania oil.

Q. In other words, they may add together a certain amount of Eureka, so-called, and a certain amount of Morgantown, to make up the 75,000 barrels of the tender?—A. Yes, sir.

Q. It being all substantially Pennsylvania high-grade oil?—A. Yes, sir.

Q. Will you turn over to pages 3 and 4 of that exhibit, towards the bottom of page 3, under the date of July 11, 1906, I see an item of Corning 72,043.18; and a little lower down, under the head of July 23, the same year, Somerset, 72,622.93; on the next page, under the date of September 20, 1906, Somerset, 74,049.12; and generally a number of items here of shipments which are slightly less than 75,000 barrels. Is there any explanation for that difference?—A. At Morgantown they possibly had the 75,000 barrels in
14210 their tanks, but probably could not pump the tanks down to get out the total amount.

Q. You mean in the ordinary course of business that——A. Not impossible, probably, to get out just the exact 75,000 barrels; but approximately, yes.

Q. The tank ran too low, or something of that sort?—A. I presume that is the reason.

Q. On the third page of that exhibit, under the date of June 25, 1906, I see an item of "Cabell, 25,537.49." What is Cabell crude?—

A. According to my understanding, it is a production in Cabell County, West Virginia.

Q. It is a lower grade of Pennsylvania, is it?—A. It is a lower grade, and the production is very small.

Q. Have you any recollection about that shipment and the size of it?—A. From Morgantown?

Q. Yes.—A. My recollection is—I won't be positive—at that time the oils for the Southern line were rather reduced; and in order to keep our lines going we were instructed to pump forward a small batch, eliminating any kind of contamination, as they desired to get the oil to use.

Q. From whom did you get those instructions? I do not mean what individual. Do you mean from the refiners? The refiners wanted the oil?—A. From the representatives of the refinery that was to use it.

Q. On page 7 of that exhibit, November 21, 1907, about the middle of the page; do you find it?—A. What date is that?

Q. November 20th and 21st. Eureka, 9,901.14. Have you found it?—A. Yes, sir.

Q. That is preceeded by Illinois and followed by Cabell
14211 oil. Have you any recollection about that shipment and how it came to be of the amount that it was?—A. That was an error in orders in starting that oil at that time.

Q. And it was stopped when the error was discovered?—A. Yes, sir.

Q. Do you know what became of that batch of oil?—A. You will find that the amount that went forward was totally mixed with some other oils.

Q. You mean at the terminus no Eureka oil was found by the tests?—A. No, sir. We could not keep track of it; it was just mixed in with the other oils.

Q. When the oil is forwarded from Millway, some of it goes to Centerbridge and some to Philadelphia, I understand, does it?—A. And some to Fawn Grove.

Q. And the shipments are more or less broken up there, are they?—A. Yes, sir. No oils originate at Millway for any point.

Q. The distance from Millway to Centerbridge is what?—A. I do not recollect exactly.

Q. About 50 miles, or 60 miles?—A. 50 or 60 miles, if I remember rightly.

Q. The batches from Colegrove do not originate there, do they? That is Exhibit 1000.—A. No, sir.

Q. Mr. Pilkington, you were subpœnaed by the Government to appear and testify in this case, were you not?—A. Yes, sir.

Q. And the subpœna directed you to bring here certain papers and records, did it not?—A. Yes, sir.

Q. Are you here in response to that subpœna?—A. Yes, sir.

Q. Have you produced various papers and records and delivered them to the counsel for the Government?—A. Yes, sir.

14212 Q. Have you complied with the terms of that subpœna as far as it was possible for you to do so?—A. Yes, sir.

Q. These exhibits which we have just been talking about, petitioner's Exhibits 992A to 1001, inclusive, are they some of the papers and records which you produced and delivered to counsel for the Government?—A. Yes, sir.

Q. In addition to those, have you delivered to counsel for the Government other papers and records?—A. In addition to these?

Q. Yes.—A. Yes, sir.

Paper marked defendants' Exhibit 397.

Q. I hand you defendants' Exhibit 397, in four sheets, and ask you whether these sheets were among those which you produced in response to the Government's subpœna, and which you delivered to counsel for the Government?—A. Yes, sir.

Q. And have those sheets been in the possession of the counsel for the Government for several days? At least, it is several days since you delivered them to Mr. Kellogg, is it not?—A. Yes, sir.

Mr. CRAWFORD. Now, Mr. Kellogg, before I go on with this, if you want to put those in——

By Mr. KELLOGG:

Papers marked petitioner's Exhibits 1007 and 1008.

Q. Mr. Pilkington, there were two other statements which I inadvertently overlooked last night—petitioner's Exhibits 1007 and 1008. State whether those are shipments over the southwest Pennsylvania trunk pipe lines.—A. I have not examined those, Mr. Kellogg. They are not from my office.

14213 Q. They do not come from your office?—A. No, sir.

Q. You don't know whether they are accurate or not?—A. No, sir.

Mr. KELLOGG. It is admitted, for the purpose of this case, that these statements, petitioner's Exhibits 1007 and 1008, were furnished by the office of the Southwest Pennsylvania Pipe Lines Company. I offer in evidence petitioner's Exhibits 1007 and 1008.

By Mr. CRAWFORD.

Q. Please look at defendants' Exhibit 397 and state generally what it shows.—A. It shows the batches of Pennsylvania oil moved from Morgantown to Centerbridge; it also shows the total amount of high-grade oil delivered at Centerbridge.

Q. By "high grade" you mean Eureka, or what you previously called Eureka?—A. Pennsylvania grade oil. It also shows the amount of other oils charged out to make up the batch that was started from Morgantown.

Q. There is also some Morgantown oil mentioned on one of the sheets. It includes some Morgantown deliveries, does it not, on the third page?—A. Well, it is all classed as Pennsylvania oil.

Q. But you did not mean to confine your answer to Eureka, simply? It is Pennsylvania grade oil.—A. It is Pennsylvania grade oil.

Q. Perhaps I misled you. Take the first item on the first page and explain that in detail, taking first the left-hand column, and then the right-hand column.—A. From September 13 to September 20
14214 there was a batch of Pennsylvania grade oil started——

Q. What year? Give the year.—A. 1907. ——was started from Morgantown and pumped through.

Q. What was the amount at Morgantown?—A. 120,604.19 barrels. That amount was charged to the Southern line, and was pumped through the Southern line, relayed at Millway, and pumped on to Centerbridge, and the amount of Eureka oil was delivered from the hight-grade tanks at Centerbridge.

Q. What does this record show as to how much of the Eureka oil which started from Morgantown in that batch reached Centerbridge? Add up the different figures there and give one total.—A. There were 102,318.08 barrels of straight Pennsylvania, or Eureka oil, delivered from our tanks to the Standard Oil Company of New Jersey.

Q. At Centerbridge?—A. At Centerbridge.

Q. Following that is an item which reads "16,688.91." That is barrels, I suppose.—A. Yes, sir.

Q. "Kansas as Eureka." What does that item mean?—A. It means the difference between 102,318.08 barrels and 119,006.99 barrels—or a difference of 16,688.91 barrels—evidently went into the low-grade tanks.

Q. These figures are made up from what? From reports you received?—A. Yes, sir.

Q. And they indicate, do they, that it was reported to you on this occasion that when that batch of Eureka reached Centerbridge there was a shortage in it amounting to 16,688.91 barrels of high-grade Pennsylvania oil?—A. Of high-grade Pennsylvania oil.

Q. And upon receiving that information what did you
14215 do?—A. I advised them, on the delivery of the Kansas oil following the Pennsylvania grade oil, to charge out of the Kansas oil 16,688.91 barrels as being Pennsylvania oil.

Q. That is to say, you directed them to charge to the consignee that amount of Kansas oil as if it had been high-grade oil, did you?—A. Yes, sir.

Q. Thus throwing the loss upon the consignee?—A. Yes, sir.

Q. The consignee, however, was the Standard Refinery, was it?—A. The Standard Oil Company of New Jersey it was delivered to.

Q. Or, the Standard Oil Company of New Jersey; yes. Well, that is the system under which the crudes which are forwarded to the Standard Oil consignees—that is the system under which it is done, is it?—A. Yes, sir.

Q. The loss is thrown upon the consignee. That is permissible. Now, there is a difference here between the two totals. On the one side the total shipped is 120,604.19; on the other side, 119,006.99, of deliveries, making a difference of approximately 1,600 barrels. What is the explanation of that?—A. That difference is: the percentage of probably an average of one-half of one per cent is deducted from the

total amount that is pumped from Morgantown to cover shortages in handling; that is, shrinkage and short on pumpage.

Q. Leakage?—A. Leakage; yes.

Q. That is the effect of the weather in contracting the oil, and any leakages that might occur; and also——

Q. That has nothing to do with the question of mixture or contamination?—A. No, sir.

14216 Q. Does the contrary thing sometimes exist? That is, is it sometimes the case that you apparently get more than you put in; that you have what is called an overage?—A. In the summer time it occasionally occurs.

Q. That is, where the heat makes it expand?—A. Expands the oil.

Q. But that has nothing to do with the question of contamination or mixture?—A. No, sir.

Q. That is absolutely a bulk loss or a bulk gain, as the case may be, due to mechanical or weather conditions?—A. Yes, sir.

Q. I understand you that so far as your records show and the reports to you go, these figures show, in that particular transaction, that over 16,000 barrels of that Eureka high-grade oil had disappeared in transit? That is, it had become mingled with the oil which preceded it and followed it?—A. Yes, sir.

Q. The same is true in substance, I suppose—that is, the same explanation—of the various other items contained in this exhibit, is it?—A. Yes, sir.

Q. For example, in the second item on the right-hand column, where you say "Kansas as crude, 19,390.45," that means that in like manner there was that shortage reported to you of the high-grade oil at Centerbridge, and you ordered that amount of Kansas to be pumped and delivered to the New Jersey Company and charged as if it had been high-grade oil?—A. Yes, sir.

Q. And the same is true as to various other items in the exhibit?—A. Yes, sir.

Q. Sometimes it is "Kansas as Eureka"?—A. Yes, sir.

Q. And sometimes it is "Illinois as Eureka," is it?—A. Yes, sir.

14217 Q. Will you turn to the second page of the exhibit? I call your attention to the ninth item, which is the first one on the top of the second page, where, in a similar connection, I find the item "1,669.54, Kansas as Morgantown." That is materially smaller than the other items of loss which precede it. Is there any explanation for that?—A. That batch of oil was pumped through the smaller group of lines from Morgantown to Millway.

Q. That is the smaller group which, for a part of the time, was used only for the Pennsylvania grade oil, is it?—A. Yes, sir.

Q. What about item No. 10, where there appears to be no loss shown? Can you tell through what part of the system that came?—A. That, I think, came through No. 1 system. But, as there is no charge on that, it is evidently in the next batch. We are not always able to charge out and clean up one batch, and if we can not get the figures correctly, why we just charge it out on the next batch.

Q. That is, you charge the loss of both on the one, do you?—A. Both on the one. It does not apply here that each one of these batches is complete—it is not completed.

Q. In item No. 11, where you find "14,330.47, Illinois as Eureka," that may include a part of the loss of mixture resulting from the preceding item where none is charged?—A. Yes, sir.

Q. But whether it be distributed exactly according to the batches, batch for batch, is there any doubt that that amount of 14,330.47 and the other amounts which appear upon this sheet were lost in the transportation of the various batches of high-grade oil taken together?—A. Yes, sir.

Q. Is there any doubt that that was lost?—A. No, sir; no
14218 doubt about it.

Q. Those are the amounts which were missing at Centerbridge and which, in order to keep your accounts straight, you had to make good by delivering a lower grade oil?—A. Yes, sir.

Q. Look at item No. 20 at the top of the third page. Have you found it?—A. Yes, sir.

Q. There the item is "2,058.99, Kansas as Eureka." Can you tell through what part of the system that came?—A. I do not recollect how that came through. It may have been, however, the same circumstances. Take from June 20th to June 29th; part of that was——

Q. What year?—A. 1908.

Q. You mean following item 21?—A. Following item 21.

Q. May it have been delivered through the smaller group of pipes which you spoke of?—A. Part of it may, and part of it may have come through the larger group.

Q. Look at items 27 and 28. Under item 27 there is no mention of any lower grade oil. In item 28 there are two items of "Illinois as Eureka," aggregating 26,000 or more barrels.—A. My recollection is that there was a batch of Pennsylvania grade oil started from Morgantown through both groups of lines for Centerbridge, and there was no way of ascertaining the amount of the loss on one batch—that is, before the first batch was completed pumping from Millway they started the second batch from Millway; so it really made one batch all the way through from Millway to Centerbridge; and we had to wait until the completion of the whole delivery before being able to ascertain the amount of loss.

14219 Mr. CRAWFORD. I offer in evidence defendants' Exhibit 397.

Redirect examination by Mr. KELLOGG:

Q. Defendants' Exhibit 397 simply covers the shipments over what is known as the Morgantown and Millway lines, including the line from Millway to Centerbridge?—A. From Morgantown to Millway and Millway to Centerbridge; yes, sir.

Q. Where are the records kept from which you made this?—A. In our oil books. The Southern Pipe Line is charged on the oil books with the amount of oil that is delivered at Morgantown on shipments for Centerbridge.

Q. How does it happen that you do not have such records for all your other lines that you deliver oil to New York?—A. It is rather impossible to keep it on through shipments clear from the West.

Q. You have no records on any other line than the Morgantown line?—A. That is all, sir.

Q. The Morgantown line is the line on which the experiments were made which the witnesses testified to in this case, is it not?—A. I am not sure about that.

Q. You know certain experiments were made there last year, do you not?—A. I have heard of it. I am not positive about it myself.

Q. Well, that is the Morgantown line, is it not?—A. Yes.

Q. How does it happen that you only have the records on the line on which those experiments were made and testified to in
14220 this case?—A. Because we have so much Pennsylvania oil of a high grade than is charged to that line, and we have to charge it out.

Q. From Olean to Unionville you carry Pennsylvania oil, and you carry Lima-Indiana oil, and you carry Illinois oil and Kansas oil. Why did you not keep the same records on that line?—A. On the last batch of Pennsylvania oil that went from Olean to Unionville we charged out; it was only one amount.

Q. I know, but why didn't you keep the records, the same as you keep them on the Morgantown line?—A. I would not know how to go about it to keep them when the oil is being shipped clear through from the west.

Q. You take the Pennsylvania oil, called Eureka oil, at Morgantown, don't you?—A. Yes, sir.

Q. And you deliver it at Centerbridge?—A. Yes, sir.

Q. On the New York Transit line you take Pennsylvania oil at Olean, do you not?—A. Yes, sir.

Q. And you deliver it at Unionville?—A. Occasionally.

Q. You do that, occasionally, don't you?—A. Yes, sir.

Q. In both cases the oil which you claim is mixed with it comes from beyond, doesn't it—west?—A. With the Pennsylvania oil?

Q. Yes.—A. There is some mixture, yes, sir.

Q. In both cases it comes from beyond?—A. Yes, sir.

Q. Then, tell me why you do not keep the records for the New York Transit's line, from Olean, in the same way you do at
14221 Morgantown.—A. I have no reason for not keeping it, except only what I said, that I have never kept them and never knew how to get at it.

Q. Why don't you keep a record of the Crescent pipe line?—A. There is only one grade of oil going through there.

Q. What grade is that?—A. Illinois oil.

Q. That has been true for some little while, but prior to——

Mr. CRAWFORD. Mr. Pilkington, you did not begin this system on the Southern line on September 13, 1907, did you—you didn't begin the system of keeping reports and records in this way on the Southern pipe line on September 13, 1907, did you?

WITNESS. What date is that?

Mr. CRAWFORD. That is the date of the first item on this record that you have produced. You did not then for the first time begin that system of keeping the record there did you?

WITNESS. No, I think it was some months previous to that.

Q. Now—going back to my question—is it not a fact that you shipped Pennsylvania oil, Illinois oil, Lima-Indiana oil, through the Crescent pipe line [handing witness petitioner's Exhibit 1001]?

Mr. CRAWFORD. Now?

Mr. KELLOGG. Well, you have within a short time; not a long time, at least.

WITNESS. July, 1907, was the last Indiana oil.

Q. And prior to that you shipped Pennsylvania oil and Indiana oil through the Crescent line, didn't you?—Yes, sir.

14222 Why didn't you keep records of that?—A. At that time any shortage in the Pennsylvania oil was charged out and stood by the pipe line.

Q. It was just as important to know the amount of it, wasn't it, as it is now?—A. The records were kept differently. Simply whatever the shortage in the oil was, at the end of the month, was charged to the pipe line, and they stood it.

Q. Have you the records showing the shortage?—A. In 1907? We show it by each month——

Q. No, no. Now, here is a shipment of Pennsylvania oil, December 31, 1907. Have you a record showing how much contamination there was in that?—A. I don't know as I can tell you the amount of contamination. We can tell at the end of the month how much shortage there was.

Q. I know. But did you at that time keep, on the Crescent pipe line, the same record that you have shown you kept on the Morgantown line?—A. No, sir.

Q. Why didn't you?—A. I don't know.

Mr. CRAWFORD. You did what you were instructed to do, didn't you?

Q. Wasn't it because the loss was so small that it wasn't worth keeping?—A. I don't know about that, sir.

Q. Don't you know it was very small?—A. It would be smaller on that line than it would be on some of the larger lines.

Mr. CRAWFORD. It is a single pipe, isn't it?

WITNESS. It is a single pipe.

Q. Isn't the reason that you didn't keep it in the Olean field, the New York Transit, because the loss was so small that it wasn't worth keeping?—A. I couldn't say as to that, sir.

14223 Q. Isn't it a fact that the loss is very small there?—A. The grades of oil are different.

Q. Isn't it a fact that the loss is very small on that line?—A. I couldn't say.

Mr. CRAWFORD. Do you know?

WITNESS. No, sir; I do not.

Q. You keep no records to show?—A. No, sir.

Q. Isn't it a fact that the reason you keep these records on the Morgantown line is because you wanted to use them in this suit, because they did show more loss than any other place?—A. I don't know about that.

Q. Who told you to keep them?—A. I couldn't say at this time who told me to keep them.

Q. When were you directed to commence the keeping of them?—A. I couldn't say the exact time.

Q. Did they commence in September, 1907?—A. I don't know about that.

Q. You produced all the records you had, didn't you?—A. I have produced all I had.

Q. They commenced in September, 1907, didn't they?—A. As far as I know; yes.

Q. That was about the time the trial of this case commenced, was it not? You started to keep these about the time the trial of this case commenced, didn't you?—A. I don't know about that. If I remember rightly, according to our tariff regulations, before that the pipe lines were standing all the shortage on the high-grade oil, and according to our regulations there was a certain amount of
14224 change in the oils, that the shipper was supposed to stand, according to the tariff regulations. Prior to that the pipe lines had been standing the shortage and paying for the loss of high-grade oil and the low-grade oil.

Q. You filed your tariffs in 1906, didn't you?—A. Yes, sir.

Q. Why did you keep the records between 1906 and September, 1907?—A. It went along without, until, if I remember, I brought it up to our people that the pipe lines were still standing that large shortage on Pennsylvania oil.

Q. Did you bring that subject up about the time the trial of this suit commenced?—A. No, sir; not that I remember.

Q. That was when it commenced, wasn't it—September, 1907?

Mr. CRAWFORD. This suit?

Mr. KELLOGG. Yes.

WITNESS. I don't know just when.

Mr. KELLOGG. The taking of testimony commenced in September, 1907.

Q. Well, you have produced all the records, haven't you?—A. There may be a month or so back of that, but I couldn't say positively.

Q. If it became important to keep it because you had tariffs, why did you not keep it on the other lines? You have tariffs on those.—A. I would not know how to go about it to find out the amount of contamination on the other lines.

Q. It is so small that it is not worth while, is it?—A. It is not so much that, but because the gravity of the oils are nearly alike.

Q. It is very small, isn't it?

Mr. CRAWFORD. Do you know whether it is large or small?

14225 WITNESS. No, sir; I do not.

Q. Well, your opinion is that it is pretty small?

Mr. CRAWFORD. I object to the witness giving any opinion. He is not an expert. He is a witness as to the facts.

Q. Is it not your opinion that the contamination is very small?—A. I couldn't say.

Q. I want your best opinion.

Mr. CRAWFORD. I object to the witness giving any opinion. He is not an expert.

Q. Answer the question, please.—A. I couldn't say, because, as I say, the gravities of the oils on those lines are nearly alike.

Q. The most serious mixture would be between Lima-Indiana oil and Pennsylvania or the western oil, wouldn't it?

Mr. CRAWFORD. Does he know? This witness is not a chemist or an engineer.

WITNESS. I am not out on the line.

Q. Well, you know, don't you, that Lima-Indiana oil contains sulphur and that they do not like to mix it with other oils?

Mr. CRAWFORD. I object to that. He is not a chemist.

A. I don't know.

Q. It appears that you take through the Olean line Lima-Indiana, Pennsylvania, Illinois, and Mid-Continent oil. Don't you?—A. Yes, sir.

Q. Then, why is it not just as important to keep a record there as it is on Morgantown?—A. I can not say.

Q. Did you make the memorandum showing that batches 9, 10, and 20, as shown on defendant's Exhibit 397, went through No. 1

14226 system?—A. My office made it.

Q. And you believe it to be correct, do you?—A. I believe it to be correct; yes, sir.

Q. And all the others went through No. 2 system, did they not?—A. I could not say. Some of it went through No. 2 and some through No. 1.

Q. Why did you not designate which went through No. 2 and which went through No. 1?—A. That was not made up by me, it was made up by the office.

Q. Oh, you mean that the others went through both No. 1 and No. 2 at the same time?—A. You mean Pennsylvania oil?

Q. Yes, sir.—A. Yes, sir, at times both grades were supposed to be going through.

Q. Batches 9, 10, and 20 are the only ones that went exclusively through No. 1 system; that is what you mean, is it [handing exhibit to the witness]?

Q. For what point? Centerbridge?

Q. Yes, from Morgantown to Centerbridge?—A. From this statement, my impression is that those batches went through No. 1 system

to Centerbridge, the balance of the Eureka oil for Centerbridge going through No. 2 system.

Q. That is as I understood the statement. The No. 1 system is the smaller of the two systems?—A. The smaller group of lines, yes, sir.

Q. I think someone testified yesterday that it had a capacity of about 18,000 barrels a day?—A. About 18,000 barrels a day.

Q. And the No. 2 system about 37,000?—A. 37,000 or 38,000.

Q. Referring to this first one that you referred to, where
14227 you show 120,604.19 barrels of Eureka oil shipped from Morgantown to Centerbridge, you mean that of that amount of oil 16,688.91 barrels was contaminated to some degree?

Mr. CRAWFORD. He did not say that at all.

Mr. KELLOGG. I want to know if that is what he means.

A. That 16,688.91 barrels was the amount of Pennsylvania oil that went in with western oil, because it was not delivered from the high-grade tanks at Centerbridge.

Q. You don't know how it came to be so delivered, do you; that western oil?—A. There are only two groups of tanks at Centerbridge; one is for high-grade oil and the other for low grade, and if the oil they put in the high grade and deliver out is not the total amount of the batch, the balance of the batch of Pennsylvania oil must have gone into the low-grade tank.

Mr. CRAWFORD. You mean to say it must have got mixed with the lower grade oil, on the way through?

WITNESS. On the way.

Q. That means simply that they may have pumped 16,000 barrels, in round figures, of the Eureka oil, into the tanks containing the western oil, does it not?—A. Not at Centerbridge.

Q. Well, at some place?—A. Probably mixed, all the way from Morgantown.

Q. That is, they may have been pumping it into tanks with western oil?—A. At what point?

Q. At some point along the line.—A. Between Morgantown
14228 and Millway, if I understand, the oil does not go into tanks.

Mr. CRAWFORD. You mean it got mixed in the line, don't you?

WITNESS. It got mixed in the line.

Q. You don't know that it got mixed in the line, do you?—A. I don't know where the mixture was.

Mr. CRAWFORD. Oh, that would be very probable—that we would pump high-grade oil into a low-grade.

Q. Do you know anything about where it got mixed?—A. I couldn't say where it got mixed.

Q. You don't know the degree of mixture, either, do you?—A. No, sir.

Q. You have nothing to do with that; it is simply reported to you as so much western oil; isn't that it?—A. That batch was that

much short when it was delivered from Centerbridge from the high-grade tanks.

Q. Yes. That means that 16,000 barrels——A. Our men would not go and put 16,000 barrels in a Kansas tank if they had not received it there.

Q. How do you know they wouldn't?—A. Because they would take the gravities of the oil and change from that.

Q. You don't know what the gravity of the oil was, contained in that 16,000 barrels, do you?—A. No, sir.

Q. You don't know anything about it?—No, sir.

Q. The difference in gravity may have been very slight as to nearly all of it?—A. I can't say about that.

Q. You don't know how it came to be mixed, either, do
14229 you?—A. I don't know where it was mixed.

Q. You don't know whether it was mixed except in the tanks, do you?—A. It was mixed in the lines between Morgantown and Centerbridge.

Q. It goes through a tank at Millway, doesn't it?—A. Yes, sir.

Q. At what other places does it go through tanks?—A. I don't think it goes through a tank between Morgantown and Millway.

Q. Do you know whether it does or not?—A. I know that we very seldom use the tanks at Watson, State Line, and Knepper.

Q. You have tanks at those places, have you not?—A. Yes, but they do not relay through those tanks, as a rule.

Q. And they are pumping stations are they not?—A. Pumping stations. But somebody else can explain better about that than I can.

Mr. Crawford. You are not a practical pipe-line man are you?

Witness. No, sir.

Mr. Crawford. You are not a field man?

Witness. No, sir.

Q. Now, No. 10 does not show any loss of Eureka oil at all, does it?—A. That is probably an error of our office in making up the figures. They probably did not adjust the shortage on that until the next batch.

Q. How do you know? You don't know anything about it, do you?—A. I know that the amount of oil was not delivered out. It may have been in two batches. These figures are probably not accurate as to each batch being of the same amount——

Q. It shows here that you delivered out substantially all
14230 the oil that was pumped in, and of the same grade, does it not?—A. In that batch. But that is not accurate.

Q. How do you know that it is not accurate?—A. Because there may have been a charge, on the next amount, that would cover that.

Q. Well, you don't know that there is?—A. We don't keep it, as a rule, in separate batches of oil.

Q. Then this it not an accurate statement?—A. It is accurate as far as we can get at it.

Mr. Crawford. It is accurate according to your records and according to the reports made to you, is it not?

WITNESS. According to the reports made to us.

Q. That batch of Eureka oil was pumped between the 12th and 17th of January, 1908, was it not [showing a paper to the witness]?—A. Yes, sir.

Q. To find out how much less there was of the Eureka oil, the men that cut it out, right there on the ground when it was transported, would have to report it to you, would they not?—A. They would simply report what they delivered out of the tanks.

Q. Yes, but they would do it right then and there, would they not?—A. But that might not represent the total amount of Pennsylvania that went through from Morgantown.

Q. Between the 12th and 17th of January you pumped into that line 81,297.08 barrels of Pennsylvania oil, called Eureka; that is correct, is it not?—A. Yes, sir.

Q. And at Centerbridge, on January 25th, they completed the delivery of that batch of oil and reported to you 80,136.62 barrels, did they not?—A. Yes—delivered.

14231 Q. To find out how much of that batch that was pumped into that line was delivered, the men had to take the figures when the delivery was completed?—A. Yes, sir.

Q. Now, if there was a shortage of that oil, will you tell me why it should be reported in another separate batch, the transportation of which never commenced until 14 days later?—A. We may have carried that until we were ready to make the next delivery.

Q. Do you mean you may have carried it on the books?—A. Carried it on the books, the amount to be delivered out, and it may have come along and been charged out on the next delivery.

Q. Why should it be?—A. Because we do not always complete each transaction, I mean as far as charging out the amount of oil.

Q. You mean it is a matter of bookkeeping?—A. It is a matter of bookkeeping.

Q. Then you don't know that this statement is correct, do you?—A. Only as far as we can go. The amount that is charged to the line we have to get out at the other end, even if it does not go out of the high grade tank.

Mr. CRAWFORD. It is correct, according to the reports you receive, is it not?

WITNESS. It is correct according to the reports I receive. It is a matter of bookkeeping to charge out the amount.

Q. The difference between the amount of the high grade reported pumped in and the amount reported pumped out is only a little over 1,000 barrels, is it not, in that case?

14232 Mr. CRAWFORD. In what case?

Mr. KELLOGG. No. 10.

A. I can not account for that batch at all. It is simply a matter of bookkeeping. It might have been on the next batch.

Q. Now, take No. 20 [handing a paper to the witness]. How do you know that was pumped through line No. 1?—A. My office keeps those records, and I am pretty sure they are right.

Mr. CRAWFORD. Well, that is what the record shows, is it not?

WITNESS. What the record shows. We are trying to make one system from Morgantown to Centerbridge without taking into account that part of the oil that is going to Philadelphia in the same batch.

Q. System No. 1 is a simpler system than No. 2, is it not?—A. I believe so.

Q. There are not many cases where there is a looping of different sizes of pipes?

Mr. CRAWFORD. Do you know?

WITNESS. I do not know as to that part of it.

Q. You don't know whether the balance of this oil was pumped through No. 2 exclusively or through both of them together, do you?—A. The balance of which?

Q. The balance stated in defendants' Exhibit 397, which you have in your hand.—A. We know the amount that goes through No. 1 system and the amount of No. 2 system from Morgantown to Millway, and there it goes in and out of the same tanks.

Q. Yes, but from Morgantown to Millway do you say all
14233 the balance of this went through No. 2 system?

Mr. CRAWFORD. What do you mean "all of the balance?"

Mr. KELLOGG. The balance of the oil shown in defendants' Exhibit 397.

Mr. CRAWFORD. Well, the balance beside what?

Mr. KELLOGG. The three that he said went through No. 1.

A. We use No. 1 system for Centerbridge. The balance of the oil for Centerbridge went through No. 2 system.

Q. I show you petitioner's Exhibit 1009. This exhibit shows the oil delivered at Philadelphia by the Southern pipe line, does it?—A. Yes, sir.

Q. That oil comes through the Morgantown line, the same as that shown in defendants' Exhibit 397, does it not?—A. Yes, sir.

Q. The only difference in the statements is that the first column of figures here does not show the amount of the shipment—does it?—A. No, sir.

Q. So you don't know the amount of the shipment in that case?—A. No, sir.

Q. It shows simply the amount of loss, but not the amount of shipment?—A. The amount of the loss, yes; the amount charged.

Mr. CRAWFORD. Does it purport to show the amount of the loss from Morgantown, or only the amount of the loss from Millway?

WITNESS. In some cases it is all the way through, part of the batch coming through both systems. Part of the batch from Morgantown might be going to Philadelphia and part to Centerbridge. It
14234 is a hard matter, without taking the two together, to get any complete record of what is charged to the Southern line and what is delivered out.

Mr. CRAWFORD. These figures of loss do not in and of themselves show the total loss of any particular batch, do they?

WITNESS. No, sir.

Q. That oil on which the loss is shown in petitioner's Exhibit 1009 was not pumped into the line at Millway in the first instance? It is a shipment that started at least as far west as Morgantown—did it not?—A. Yes, sir.

Q. And that shows the loss at Philadelphia of that shipment which started at Morgantown, does it not, on that part which reached Philadelphia?—A. Will you state that question again, please?

Q. Petitioner's exhibit 1009 shows the loss at Philadelphia, on the part of the shipment at least which started from Morgantown?

Mr. CRAWFORD. And which reached Philadelphia.

Mr. KELLOGG. And which reached Philadelphia.

A. Yes.

Q. None of it started originally at Millway?—A. No, sir.

Q. And you don't know the amount of the shipment?—A. I don't know the amount of the shipment.

Q. You have no records that will show it?—A. The total amount tendered for shipment we have.

Mr. CRAWFORD. But this was not the total loss on the whole shipment, but only the loss on the part that went to Philadelphia?—A. Only on the part that went to Philadelphia. The balance of the loss was on the part that went to Centerbridge.

Q. Now take No. 20. I show you a shipment of 127,459.18 14235 barrels delivered at Centerbridge—128,393.21, on which you show a loss of 2,058.99 barrels. That is the total amount that started from Morgantown, is it not?—A. On that shipping order, yes sir.

Q. None of that went to Philadelphia?—A. I can't say whether any of it went to Philadelphia.

Q. Look at petitioner's Exhibit 997.—A. That was all on shipping orders for Centerbridge.

Q. None of that went to Philadelphia?—A. None of that went to Philadelphia that I know of.

Q. Then, that represents the entire loss on that, as far as you know?—A. As far as I know.

Q. And it traveled all the way from Morgantown to Centerbridge?—A. Yes, sir.

Q. Now, you have produced all of the records you have of that kind, have you?—A. Yes, sir.

Q. All you can procure?—A. Yes, sir.

(A paper was marked "Petitioner's Exhibit 1010.")

Q. I show you a subpœna, which has been marked "Petitioner's Exhibit 1010." Was that subpœna served on you?—A. I presume this is a copy of it?

Q. That is correct. That was served on you?—A. Yes, sir.

Mr. KELLOGG. I offer in evidence petitioner's Exhibit 1010. It is the original subpœna, with the return of the marshal.

Q. Now, this line reaching Olean also runs to Buffalo, does it not?—A. Yes, sir.

Q. And there is a refinery at Buffalo and at Olean?—

14236 A. I believe so.

Q. You deliver different grades of oil through the pipes coming from west of Olean or coming from Pennsylvania and other points, do you not?—A. To those refineries?

Q. Yes.—A. From Pennsylvania and from the West, yes, sir.

Q. Do you keep any records, at those delivery points, of contamination?—A. No, sir.

Q. Have you ever kept any such records?—A. No, sir.

Q. You also deliver different grades of oil to Cleveland, do you not?—A. At times; yes, sir.

Q. Do you keep any records for that?—A. No, sir.

Q. The National Transit Line from Colegrove to Millway and to Centerbridge and Philadelphia delivers different grades of oil, at different times, does it not?—A. Yes, sir.

Q. Do you keep any records for that?—A. No, sir.

By Mr. CRAWFORD:

Q. Petitioner's Exhibit 1010 is the subpœna in response to which you produced the various papers and records which have been offered in evidence here, or concerning which you have been interrogated, is it not?—A. Yes, sir.

Q. And it is the same subpœna to which you referred when you told me that you had complied with it as far as it was possible for you to do so?—A. Yes, sir.

(The hearing was here adjourned, to be resumed at the office of the United States marshal, at the city of Chicago, State of Illinois, at 10.30 a. m., Tuesday, January 19, 1909.)

14237 ROOM 627, FEDERAL BUILDING, CHICAGO, ILL.,
Tuesday, January 19, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, pursuant to adjournment, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. F. L. Crawford.

W. H. ISOM, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Mr. Isom, were you ever in the employ of a refining company or pipe line company at Kankakee, Illinois?—A. Yes, sir.

Q. How long ago was that?—A. 1898, 1899; part of 1897.

Q. I am not sure whether it appears in evidence; I think it does. Whom was that owned by?—A. Owned by the Cudahys.

Q. Do you remember the name of the pipe line and the refining company?—A. Indiana Pipe Line Refining Company.

Q. Did the Pipe Line own both the refinery and the pipe line?—A. Yes.

Q. About what was the extent of the pipe line of the
14238 refinery?—A. The pipe line, as I remember it now, was 180 miles of main line.

Q. In the Illinois field?—A. In the Indiana field.

Q. In the Indiana field?—A. Yes, sir.

Q. Oh, yes. And did it have a refinery?—A. It had a refinery at Kankakee; yes.

Q. Do you remember the sale of the property to some concern?—A. Yes, sir.

Q. To whom was it sold, as you recollect?—A. It was sold to an English company.

Q. Do you remember the name of it?—A. No. It was an odd name; as my memory goes now it was the English Industrial Syndicate (Limited). That is my memory of it, but I would not say that is exact.

Q. Who is the men who represented it?—A. A Mr. Johnson.

Q. Of London?—A. Of London.

Q. Do you remember about the time of that sale—whether it was about 1898 or 1899?—A. 1899.

Q. Please state as near as you can recollect whether at that time the refinery was completed or not.—A. Why, certain parts of it were completed; certain departments.

Q. What departments?—A. For making refined oil.

Q. That was completed?—A. Yes.

Q. Were there any of the departments that were not completed?—A. Yes.

Q. What were they?—A. The wax department.

14239 Q. Some witness testified—I cannot now recall exactly who, but I think Mr. Archbold—that his recollection was that the refinery had not been completed, but that there was only the material on the ground and some little work done on it.—A. The refined oil part was practically completed.

Q. It was the other parts that were not?—A. It was the other parts that were not; yes, sir.

Q. Was the refined oil department completed so as to be—A. About ready to start.

Q. About ready to start?—A. Yes, sir.

Q. Do you remember the capacity of the refinery?—A. 1,800 barrels a day.

Cross-examination by Mr. ROSENTHAL:

Q. Did it ship any oil, Mr. Isom?—A. The refinery?

Q. Yes, sir.—A. The refinery shipped no oil, because they did not start.

Q. You had a pipe line running from where?—A. Kankakee; into the Indiana oil field.

Q. And the oil was piped from the Indiana oil field to the refinery at Kankakee?—A. To the refinery at Kankakee; yes.

Q. That is, crude oil?—A. Crude oil; yes, sir.

Q. And you say the refinery never was started?—A. Never was started.

Q. It never refined any oil?—A. It never refined any oil.

14240 Q. Did you pipe any oil?—A. Oh, yes, we piped oil, yes.

Q. Piped it from the Indiana field to what point?—A. To Kankakee.

Q. And what did you do with it there?—A. Shipped it from there in tank cars.

Q. From where?—A. From Kankakee.

Q. To where?—A. Various points all over the West.

Q. Did you ship any to St. Louis?—A. Yes, sir.

Q. In tank cars?—A. In tank cars, yes.

Q. Kankakee is where, geographically?—A. South of Chicago 52 miles.

Q. On what road?—A. Illinois Central, Three "I," and Big Four.

Q. Do you know how far it is from Whiting, Indiana?—A. 52 miles to Chicago and 14 miles to Whiting; that would be 66 miles, I should say.

Q. By way of Chicago?—A. By way of Chicago.

Q. By way of Riverdale it would not be as far, would it?—A. No, it would not be as far as that.

Q. You shipped crude oil from Kankakee to St. Louis to what concern there?—A. The Laclede Gas Light Company was our largest shipper.

Q. Did you ship much oil there?—A. Large quantities, yes.

Q. Over what road?—A. I think nearly altogether over the Illinois Central.

Q. And for how long a period of time?—A. That I would

14241 not recollect now. It was over a year, I think.

Q. At what rate?

Mr. KELLOGG. That is objected to as not proper cross-examination.

A. At what rate?

Q. Per hundred pounds, to East St. Louis.—A. I think at 6 cents. It is a long while back. I would not remember positively.

Q. It wasn't more than 6 cents, was it?—A. It wasn't more than 6 cents.

Q. You are quite clear in your recollection?——A. Yes.

Q. —— that it surely was not more than 6 cents?—A. Not in excess of 6 cents.

Q. Did you ever hear of an 18-cent rate?—A. Never heard of one, no, sir.

Q. To East St. Louis, St. Louis?—A. No, sir.

Q. That was a 6-cent rate from Kankakee to East St. Louis, was it not?—A. To East St. Louis, yes, sir.

Q. Did you know what the rate was from Chicago to East St. Louis for transportation of oil in tank cars at that time?

Mr. KELLOGG. Same objection.

A. I could not say that I do at the present time. I might have then.

Q. Your rate was not a secret rate, was it?—A. Not at all; at least we didn't suppose it was.

Q. And you were in charge of the traffic of your company?—A. Yes, sir.

14242 Q. You endeavored, of course, to get the best rate that you could?—A. Yes, sir.

Q. And in doing that you probably endeavored to ascertain what the oil rates were that other competitive companies were paying?—A. Naturally.

Redirect examination by Mr. KELLOGG:

Q. Before you went to the Cudahys to take charge of their Kankakee plant what had been your business, Mr. Isom?—A. I had been in the oil business.

Q. Where?—A. Well, Toledo and St. Paul.

Q. For what companies?—A. The Standard Oil Company.

Q. What was your position?—A. I was manager of the Toledo division, and vice-president of the Standard Oil Company of Minnesota.

Q. Were you in their employ at Whiting, Indiana?—A. Never.

Q. Did you have anybody who was working with you?—A. Working with me at what time?

Q. At Kankakee.—A. Yes. He was formerly in their employ, yes.

Q. He was before he went with you?—A. Yes, sir.

Q. Who was it?—A. A man by the name of Ramar.

Q. You say you have no recollection of knowing what the Standard Oil rate was from Chicago?—A. I have not now, no.

Q. Well, is refined oil more valuable than crude oil?—A. It is more valuable, yes.

14243 Recross-examination by Mr. ROSENTHAL:

Q. It takes the same rate for transportation in tank cars, generally, does it not?—A. It does in the East; yes.

14244 CHARLES EDWIN FULTON called on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Please give your full name and your occupation.—A. Charles Edwin Fulton; agent for the Chicago and Ohio river lines; secretary Chicago and Ohio River Committee; chairman Mississippi Valley Freight Association.

Q. You have charge of the Ohio River Freight Association, have you?—A. Yes, sir.

Q. State what that association is, what your position with it is, and what you have charge of. Give us a description of it.—A. I have charge of the compiling of statistics, the promulgation of tariffs, records of meetings, and such things as that.

Q. That includes rates from Chicago and Chicago territory to where?—A. Indianapolis, Louisville, Jeffersonville, New Albany, Cincinnati, Evansville, and through these points—southeast.

Q. That is, the traffic, moving from Chicago southeast to the Ohio gateways, is it not?—A. Yes, sir.

Q. And through those gateways to the South?—A. Yes, sir.

Q. You publish tariffs, do you not? The association publishes tariffs for all the railroads leading from Chicago and Chicago territory to those crossings?—A. Yes, sir.

14245 Q. The 11-cent rate on oil from Chicago to Evansville, Jeffersonville, Cincinnati, and other places was published by your committee, was it not?—A. Yes, sir; by their direction.

Q. That tariff has been in existence for many years, has it not?—A. Yes, sir; since 1896.

Q. Is it part of your business to keep track of the tariffs that are published by the roads, in that territory, between Chicago and Chicago points and the Ohio River?—A. Yes, sir.

Q. Is it part of your business to keep track of the shipments of the roads? Do you have billing returned to you?—A. Yes, sir; in particular territory.

Q. I am speaking about that territory from Chicago and Chicago points to the Ohio River.—A. Yes, sir.

Q. How did you become cognizant of the billing of freight by the various roads? What is the object of its being sent to your office?—A. For the purpose of compilation. Monthly statements?

Q. Do you keep track of the rates, also?—A. Yes, sir.

Q. Do you know whether the roads were shipping at the rates named in the tariffs?—A. I could not answer to that last question.

Q. How is that?—A. They were billed at tariff rates.

Q. Did you ever know of an 8¼-cent rate or a 6-cent rate from Whiting, Indiana, over the Chicago & Eastern Illinois and the Evansville & Terre Haute to Evansville and to points beyond in the Southern States?

14246 Mr. ROSENTHAL. I object to that, on the ground that it is immaterial whether Mr. Fulton knew of that or not?—A. I did not know anything about that rate until after this was started here last year.

Q. Until what?—A. Until the proceedings were started here last year. I didn't know anything about that rate; hadn't the slightest idea of it.

Q. Had never heard of it?—A. No, sir.

Q. In your business, I suppose you study tariffs and become familiar with their formation, and make tariffs and file them, do you not?—A. That has been my purpose for a good many years.

Q. I do not remember the number, but I show you a Grand Trunk tariff, I. C. C. No. A-994, which I will call the Grand Trunk tariff, and the National Despatch-Great Eastern Line Billing Book or Shippers' and Agents' Guide No. 9 (I do not remember the exhibit number) and ask you if you have ever examined those?—A. I do

not have any occasion to examine any of these tariffs—these eastern tariffs.

Q. Mr. Schindler asked you to examine them, did he not?—A. Yes, sir.

Q. You looked them over at his request, did you?—A. Yes, sir.

Q. Are you familiar with that tariff?—A. I imagine so.

Q. Please state whether in your opinion that Grand Trunk tariff, in connection with the billing instructions, makes a rate on petroleum and its products from Toledo to any New England point other
14247 than Boston; that is, whether it makes the Boston rate to New England points?—A. It makes a specific rate here of 27 cents, to Boston.

Q. Does it make that Boston rate, in your opinion, in connection with the billing instructions, to any other New England point?—A. No, sir.

Q. Please state why.—A. There is a clause to that effect which prohibits it.

Q. Which clause is that? Please read it.—A. The third clause on page 1 of the National Despatch-Great Eastern Line billing book.

Q. Please read it.—A. "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested." My interpretation of that would be that the Boston rate does not apply to the New England points usually taking Boston rates; it would be an arbitrary over and above Boston.

Cross-examination by Mr. ROSENTHAL:

Q. These billings of shipments that you get for the purpose of checking up the rates, you get from whom?—A. From railroad offices.

Q. And you get them for the purpose of checking up the rates, and for statistical information?—A. Yes, sir.

Q. How are you interested in checking up the rates?—A. To see that their tariffs are carried out.

Q. To see that the different roads that are members of your
14248 association ship in accordance with the tariff of the association?—A. Yes, sir.

Q. If in checking up those billings you should ascertain that a road had shipped at a rate less than the tariff of the association, what action would you take as secretary of the association?—A. Call their attention to it.

Q. And call the attention of the association to the transgression?—Not exactly "transgression," if they had authority for the rate or put the rate in individually. If they desired to participate in the business they would request me to publish the same rate.

Q. But you would call the attention of the road that shipped at a different rate, to the fact, and you would also call the attention of the other roads in the association——A. Yes, sir.

Q. ——to the fact that this particular road had shipped at a less rate than the association tariffs?—A. If it was found that it was not an error or anything like that.

Q. Do you know Mr. W. D. Hurlbut?—A. Yes, sir. I have had the pleasure of knowing him for a good many years.

Q. About how many years?—A. In the neighborhood of 20.

Q. Is he recognized in freight circles as a freight traffic man of great experience?—A. Yes, sir.

Q. And of great ability?—A. Yes, sir.

Q. Whose experience is considered as being a valuable one?—A. Yes, sir.

14249 Q. On an expert freight matter?—A. Yes, sir.

Q. How about Mr. Pierpont, the general freight agent of the Milwaukee & St. Paul road, in that regard?—A. I could say the same thing for Mr. Pierpont.

Q. And Mr. Zimmerman, of the Michigan Central?—A. I can not say any different of him.

Q. And Mr. Fort, of the Illinois Central?—A. The same.

Q. Mr. Eyman, of the Chicago & Northwestern?—A. The same.

Q. And Mr. Shubert, of the Rock Island?—A. The same.

Q. And Mr. Felton, of the Standard Oil Company?—A. The same.

Q. Mr. Felton, how much time have you given to the consideration of this Grand Trunk tariff A-944 in connection with this National Despatch-Great Eastern billing instructions?—A. Very little.

Q. All of these gentlemen whom I have named—who I think we all agree are recognized freight experts in this country——

A. Yes, sir.

Q. ——have given a great deal of time to the consideration of that tariff, and have testified under oath here that taking these two tariffs together they do make a rate to all points in New England taking the Boston rate as shown by the billing book, notwithstanding the apparent exception that your attention was called to, upon the theory that the tariff I. C. C. No. A-944 is a special tariff within the meaning of that rule. Would the fact that all of those

14250 gentlemen have so testified under oath after a careful examination of the tariffs and after careful consideration of the subject-matter, influence you at all in the opinion which you have reached?—A. No, sir. That is merely my interpretation.

Q. What do you mean by saying that it is merely your interpretation?—A. I have not gone into the depths of the tariff. It might be possible; there might be something to change that.

Q. There might be something to change that?—A. Yes.

Q. As a matter of fact, you have given it only the most casual consideration, haven't you?—A. Just offhand; yes.

Q. When was your attention first called to it?—A. Three or four weeks ago, wasn't it, Mr. Schindler?

Q. Where?—A. In my office.

Q. By whom?—A. Mr. Schindler.

Q. What did he say to you?—A. He asked me practically the same thing that Mr. Kellogg has asked me.

Q. Do you remember what he said to you?—A. I can not repeat verbatim. He merely asked me the same question that Mr. Kellogg has asked me.

Q. Is that all he did—just ask you the question?—A. Yes, sir.

Q. Did he give you his opinion?—A. Not until after mine was expressed.

Q. How much time did you devote then to the consideration of the matter? A few minutes?—A. That is all.

Q. And you have not seen the tariffs since then until you
14251 got on the witness stand?—A. I saw them yesterday afternoon.

Q. How much time did you give to them then?—A. About five minutes.

Q. Does it frequently happen that old and experienced freight traffic men, such as these gentlemen whom I have named, and yourself, differ in their interpretations of printed tariffs?—A. No, sir.

Q. That does not frequently happen?—A. No, sir.

Q. You usually get together?—A. Well, they usually are of the same opinion.

Q. Do you mark the date that the Grand Trunk tariff became effective? Is that indicated? [Handing tariff to witness.]—A. It was effective December 12, 1904.

Q. What date was the National Despatch-Great Eastern Line Shippers' and Agents' Guide No. 9 effective? [Showing same to the witness.]—A. January 1, 1903.

Q. About two years before the Grand Trunk tariff; is that right?—A. Yes, sir. That is something that does not change very often.

Q. On shipments that were billed to Evansville proper, did you receive reports?—A. No, sir.

Q. It was only on the through shipments to points beyond the Ohio River?—A. That is the only traffic that I took any record of at all. Didn't compile any statistics to Chicago and Evansville.

Q. What roads were members of your association?—A. Sixteen, all together—the Chicago and Ohio River committee.

14252 Q. And you issued a tariff that was used by all sixteen of those roads?—A. Between those specified points.

Q. What was that tariff called?—A. Joint through freight tariff No. 42, I guess; on up to 49—the last issue.

Q. Of your association?—A. Yes, sir.

Q. Who made up that tariff?—A. It was originally compiled by the individual lines in interest and put together as a joint tariff for the use of all lines in interest.

Q. Did the association meet from time to time?—A. Yes, sir.

Q. And consider the tariffs?—A. The rates.

Q. And this 11-cent rate from Chicago to Evansville was the rate over how many roads?—A. Over all of the roads in interest.

Q. Whatever roads moved traffic between Chicago and Evansville——A. —— was carried at the 11-cent rate.

Q. ——carried it subject to the 11-cent rate?—A. Yes, sir.

Q. And none of those sixteen roads, no matter what the routing was, had a different rate between those two points?—A. Not to my knowledge.

Q. Do you know how they reached the 11-cent rate—how that rate was made?—A. Well, the rate has really been in effect since 1893.

Q. That does not quite answer the question.—A. I can not call to mind now how that rate was arrived at.

14253 Q. Were you secretary of the association at the time?—A. Yes, sir.

Q. Of course it was not the result of any agreement between the sixteen roads?—A. It was the result of an understanding and announcement on the part of some of the lines.

Q. They all happened to announce the same rate?—A. Yes, sir.

Q. And of course that was accidental?—A. It might have been.

Q. What?—A. I hardly think so. It was mutually understood to be the rate.

Q. Wasn't it the result of fierce competition between the roads that they all happened to hit upon the 11-cent rate, or didn't that enter into it at all?—A. Not at that time.

Q. What?—A. No, sir.

Q. Not at all?—A. No, sir.

Q. It was the result of sheer accident that these sixteen competitive roads happened to land upon the 11-cent rate between Chicago and Evansville?—A. Well, all of these sixteen roads are not interested in the handling of this petroleum product.

Q. Well, as many of them as were interested in the 11-cent rate.—A. They perhaps decided on that rate.

Q. After conference, I suppose?—A. Yes, sir.

Mr. KELLOGG. Did you give such consideration to those tariffs as you thought would enable you to answer the questions asked of you?

14254 WITNESS. I thought it was sufficiently familiar to come to an understanding.

14255 FRANK C. REILLY, called on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your position?—A. General freight agent of the Chicago & Eastern Illinois Railroad Company.

Q. How long have you been?—A. Since August 1, 1906.

Q. Have you charge of the office and tariff files and correspondence files of that company in relation to traffic?—A. Yes, sir.

Q. Have you been served with a subpœna to produce certain documents?—A. Yes, sir.

Q. Will you let me see it?

(Witness hands paper to Mr. Kellogg.)

Q. Have you made a search for the documents requested in this subpœna?—A. Yes, sir; made a very careful seach of the office records.

Q. Have you found them all?—A. No, sir.

Q. Well, you found certain documents?—A. Yes, sir.

Q. Let me take those that you found.

(Witness hands papers to Mr. Kellogg.)

Q. The papers which you have given me, bound together, did you find them in that condition?—A. Yes, sir.

Q. As a part of the tariff file, or what do you call it?—
14256 A. Well, a part of the correspondence file. These files may run in any numbers, that is, there may be five or six parts and but one number to the file.

Q. Did this file pertain to the issuance of tariffs on oil from Whiting to Grand Junction?—A. It evidently did, from what the correspondence says.

Q. These documents that you have given me were a part of that file and the records of your office?—A. Yes, sir.

Q. Were they fastened together in the way that I have them here, when you found them?—A. Yes, sir; that is the way we took them from our file.

(Papers marked petitioner's Exhibits 1011 to 1015, inclusive.)

Q. I show you petitioner's Exhibits 1011 to 1015, inclusive. Are they some of the papers about which you have been testifying, which were in the file?—A. Yes, sir.

Q. Referring to Exhibit 1011, which is a tariff from Dolton, Illinois, to Grand Junction, Tennessee, effective September 15, 1897, being G. F. D. No. 10084, was that found in the file to which you refer?—A. Yes, sir.

Q. Whose handwriting is the pencil writing at the bottom, beginning with the words, "Mr. Carpenter," and signed, "Wm. C.?"

Mr. Rosenthal. If you know.

A. I am inclined to say that that is Mr. William Campbell's, formerly general freight agent of the road.

14257 Q. Are you familiar with his handwriting?—A. Yes, sir.

Q. The pencil changes in the date of the tariff, is that the same handwriting?—A. No, sir.

Q. Do you know whose handwriting that is?—A. No, sir; I do not.

Q. The note at the bottom is the one you say is in Mr. Campbell's handwriting?—A. Yes, sir.

Q. It reads: "Mr. Carpenter: This arranged with President Barlow, E. & T. H., and Mr. Howard Page, Standard Oil Company. Mr. Barlow arranged with Mr. Markham, of the Ill. Central. Mr. Barlow informed me had talked it over with you. Wm. C." Is that the note you refer to?—A. Yes, sir.

Q. That is Mr. Campbell's handwriting?—A. Yes, sir.

Mr. KELLOGG. I offer this petitioner's Exhibit 1011 in evidence.

Mr. ROSENTHAL. I object to it upon the ground that it is immaterial, on the ground that it is not rebuttal, and upon the further ground that there is no proof as to when the lead pencil notation was placed upon the tariff by Mr. Campbell; and upon the further ground, and wholly independent of the last objection, namely, as to when the lead pencil notation was placed upon the tariff, that any notation placed upon there by Mr. Campbell does not make any evidence against any of these defendants; it is mere hearsay; and for the reason that it is inter alios.

Q. Mr. Reilly, do you know the handwriting on petitioner's
14258 Exhibit 1012?—A. Yes; I recognize the handwriting.

Q. I mean the writing in ink?—A. Yes, sir.

Q. In whose handwriting is that?—A. Mr. S. J. Cooke.

Q. Was he assistant general freight agent of the C. & E. I. Railroad in 1898?—A. I think so.

Q. I believe that appears already, but I am not sure. Do you know the handwriting of the pencil memorandum on petitioner's Exhibit 1012?—A. Why, I think I could recognize it from the initials and signature.

Q. Whose handwriting is it?—A. Mr. B. H. Harris.

Q. What was his position at that time?—A. I do not know; but I recall he was chief tariff clerk.

Q. For the C. & E. I.?—A. Yes, sir.

Q. Do you know the handwriting of the pencil writing on the back of petitioner's Exhibit 1012, which reads: "B. H. H. This is OK. H. H. R. Will explain. 2/5/98. W. C.'"—A. Mr. William Campbell's.

Q. Do you know the pencil handwriting, "H. H. R. Please issue. Wm. C. 2/5/98?"—A. Campbell's.

Q. And is petitioner's Exhibit 1013 in Mr. Campbell's handwriting?—A. Yes, sir.

Q. Do you know the handwriting of petitioner's Exhibit 1014?—A. No, sir; I do not.

Q. Do you know the handwriting of petitioner's Exhibit 1015?—A. Mr. Wm. Campbell's.

Mr. KELLOGG. I offer in evidence petitioner's Exhibits 1012, 1013, and 1015. Do you want the same objections to each?

14259. Mr. ROSENTHAL. The same objections, in so far as the specific grounds of the objections apply to the various other exhibits, the form of the objection being modified only by a modification of name with respect to the other exhibits.

Mr. KELLOGG. It is understood that the objection may apply with the same force and effect as to each one, without repeating it.

Q. Mr. Reilly, have you made search for other documents named in the subpœna? Please state what they are and what search you have made, and whether you have found them.

Mr. ROSENTHAL. I object to Mr. Reilly's stating what documents the Government has called for. I have no objection to his stating

that he made search for certain documents called for in a subpœna and is unable to find them.

Q. Well, let me see the subpœna.

(Witness hands paper to Mr. Kellogg.)

Q. After this subpœna was served on you, Mr. Durand asked you to produce all correspondence and memoranda that you could find in relation to this matter, did he not?—A. Yes, sir; he asked me——

Q. Have you made a search for the other correspondence?—A. Well, I made a search through this particular correspondence—that is, through the oil files—for the correspondence called for by Mr. Durand.

Q. Have you got it here?—A. Yes, sir.

Q. Will you let us have it, please? I wish you would get it.

(Witness produces papers and books.)

Q. Now, what have you produced, Mr. Reilly?

14260 Mr. ROSENTHAL. The report of the Commissioner of the Bureau of Corporations.

Mr. KELLOGG. Well, I asked him to do that, Mr. Rosenthal.

Q. Will you let me take the correspondence, Mr. Reilly?

(Witness hands papers to Mr. Kellogg.)

Q. Have you any objection to my going through this, Mr. Reilly?—A. No, sir. I do not imagine you would call for them unless you——

Q. Have you got any other files, Mr. Reilly?—A. No, sir. We have some other files, but that was the particular file which you called for. I do not know that they relate particularly to this Evansville or Grand Junction case.

Mr. KELLOGG. I would like to excuse this witness, say until 2 o'clock, until I can look through this stuff. I have not seen it at all, Mr. Rosenthal.

Mr. ROSENTHAL. All right.

(A recess was here taken until 2 o'clock p. m.)

14261 AFTERNOON SESSION.

C. A. WITZEL, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Mr. Witzel, what is your business?—A. I am local freight agent of the Baltimore & Ohio Railroad at Cleveland.

Q. How long have you been?—A. Eighteen years.

Q. As such do you have entire charge of the station?—A. Yes, sir.

Q. Is it a part of your business to keep informed as to the tariffs on the Baltimore & Ohio road?—A. Yes.

Q. Who is your chief clerk?—A. R. H. Troescher.

Q. How long has he been?—A. About two years. Since about the 1st of January, 1907.

Q. I show you Baltimore & Ohio tariff, I. C. C. No. 4538. Is this the tariff which was in force on petroleum and its products from Cleveland from February 1, 1904, to July 15, 1905?—A. Yes.

Q. In your opinion does the tariff referred to (I. C. C. No. 4538), in connection with the Erie Despatch eastbound billing instructions I. C. C. No. 2, make rates from Cleveland to, say Portland, Maine?—A. From Cleveland?

Q. Yes.—A. No, sir.

Q. Why?—A. We have no working per cents out of Cleveland via Erie Despatch or Erie Railroad.

Q. Well, is the Erie Despatch billing instructions in con-
14262 nection with the Erie Railroad?—A. I never saw an Erie Despatch billing book until this morning, and I just glanced at one page casually.

Q. You have looked it over, have you not?—A. No.

Q. You say you have no working arrangements with the Erie Despatch out of Cleveland?—A. Out of Cleveland.

Q. You have no divisions, you mean, of rates?—A. Yes.

Q. Then, as I understand you, you could not quote a rate to any New England point on the basis of the Erie Despatch billing book from Cleveland?—A. No; could not.

Q. You ship oil out of Cleveland on the Baltimore & Ohio Railroad, do you not?—A. Yes, sir.

Q. Is it billed from your office?—A. Yes, sir.

Q. Have you examined the billing in your office from the date this tariff became effective, to wit, February 1, 1904, until it was canceled, to see if any shipments had been made on that tariff in connection with the Erie Despatch billing instructions named here?—A. Personally I did not. But I had it examined, and it was reported that there were none.

Q. Who did it?—A. One of the boys in the office; I do not recall who it was. I had one of the boys detailed for that work.

Q. Is he here?—A. No, he is not.

Q. Who did it with him?—A. I guess he did it alone.

Mr. ROSENTHAL. Do you know what he did?

The WITNESS. Just looked through the billing books.

Mr. ROSENTHAL. Do you yourself know what he did?

The WITNESS. No; only I set him to the task, that is all.

Q. Is he one of your regular clerks?—A. Yes.

Q. And he examined the billing for you?—A. Yes.

Q. In the regular course of business?—A. Yes.

14263 Q. Did he submit any bills to you showing any such shipments?—A. No.

Q. Do you know of any such shipments?—A. I don't know of any.

Q. What did he report to you in connection with that?—A. That he found no shipments.

Cross-examination by Mr. ROSENTHAL:

Q. Now let me see just what the force and effect of your testimony is, if I understand it. You have been shown B. & O. R. R. joint freight tariff I. C. C. No. 4538.—A. Yes, sir.

Q. That is a tariff of the Baltimore & Ohio road in connection with the lines named on the face of the tariff, for the transportation of petroleum and the products of petroleum?—A. Yes, sir.

Q. From Allegheny; Brooklyn, Ohio; Butler, Pennsylvania; Cleveland, Ohio, and various other cities there named?—A. Yes, sir.

Q. Now, you were asked whether with this tariff alone (I. C. C. No. 4538) and Erie Despatch eastbound billing instructions No. 15 (I. C. C. No. 2) you could name a rate on petroleum from Cleveland, Ohio, to Portland, Maine.—A. Yes, sir; I was asked that question.

Q. And you said that you could not——A. I could not.

Q. ——from these two tariffs——A. From those two tariffs.

Q. ——name a rate from Cleveland to Portland. Now, why not?—A. Because we have no working arrangement out of Cleveland via Erie Despatch; in other words, no per cents.

Q. That is, there are no percentage sheets or division sheets?—A. That is it.

14264 Q. Between the B. & O. and the Erie Despatch, from Cleveland, Ohio?—A. Yes, sir.

Q. That is right?—A. That is right.

Q. And that is the only reason why these two tariffs which I have designated, taken together, would not enable you to name such a rate as you have been asked about?—A. Yes.

Q. If, however, you had such a division sheet or a percentage sheet, then, taking that division or percentage sheet together with the B. & O. tariff I. C. C. 4538 and the Erie Despatch tariff I. C. C. No. 2, you could name a rate?—A. I should say yes, provided Erie Despatch instruction did not prohibit. But I am not familiar with the Erie Despatch.

Q. Provided there is nothing on the face of the Erie Despatch tariff which would prohibit your naming such a rate specifically from Cleveland?—A. Just so.

Q. Now you say that you had no such division or percentage sheet. Suppose that you had had division or percentage sheets between the B. & O. and the Erie; those would not have been filed with the Interstate Commerce Commission, would they?—A. That I don't know.

Q. That would be a matter simply between the railroads themselves, would it not?—A. I should say yes. But of course——

Q. So that a shipper having these two tariffs, and not knowing whether the division or percentage sheet had been filed or not, would, from an inspection of these two tariffs, assume that there was a rate——A. Yes, sir.

Q. ——from Cleveland to Portland, or other New England points, would he not?—A. He might.

14265 Q. Certainly. So that, on their face, subject to the qualification that you suggested (of there being something in the

Erie Despatch book, that you have not had your attention called to) they do make a rate?—A. Yes, sir.

Q. Where is Brooklyn, Ohio? That seems to be one of the points named on B. & O. tariff I. C. C. 4538.—A. It is a little suburb or village (I suppose it is a village—a suburb at least) of the city of Cleveland, situated five miles from the center of the city.

Q. West of Cleveland?—A. South. Brooklyn is a little suburb of Cleveland, situated about five miles south. I will qualify that—Brooklyn Station. My recollection is that Brooklyn is now a part of the city.

Q. That is, the village of Brooklyn itself has now been made a part of the city of Cleveland?—A. Yes, sir.

Q. But Brooklyn Station, the station named on B. & O. I. C. C. No. 4538, lies about five miles south of the Cleveland station?—A. Of the center of the city?

Q. Of the center of the city of Cleveland?—A. Yes.

Q. Now, is that a manufacturing point?—A. To some extent, yes.

Q. Is it connected with the city of Cleveland?—A. It lies adjacent to it geographically, and is connected with it by street car and steam railroad.

Q. And steam railroad. What is that—a belt line?—A. No, sir; it is the C., T. & V. branch of the Baltimore & Ohio Railroad.

Q. So that the Baltimore & Ohio Road also runs to Brooklyn?—A. Yes, sir.

Q. As well as to Cleveland?—A. Yes, sir.

14266 Q. Suppose you were making a shipment from Brooklyn to Portland, Maine, or other New England points, would that shipment pass through Cleveland in going to New England?—A. Yes, sir.

Q. Over the Baltimore & Ohio?—A. Yes; up to Cleveland.

Q. Now, in connection with shipments made from Brooklyn, this little place that you have spoken of as a suburb of Cleveland (now a part of Cleveland), did the Erie Despatch have a division with the Baltimore & Ohio?—A. It did.

Q. Just what do you mean by that?—A. That on a basis of the through rate the railroads agree among themselves as to the proportion each shall obtain or receive for the service performed in connection with the transportation of a commodity from one point to another.

Q. So that on shipments made from Brooklyn to New England points right straight through Cleveland, in view of the fact that there existed a division sheet between the Baltimore & Ohio and the Erie Despatch, from Brooklyn, these two tariffs which Mr. Kellogg called your attention to, taken in connection with the division sheet, would make a rate from Brooklyn to New England points?—A. Leaving out the Erie Despatch—with which I am not familiar—yes, the percentage sheet and our tariff would.

Q. Unless there were some exception or restriction in the Erie Despatch——A. Yes, that is right.

Q. ——to which your attention as yet has not been called?—A. That is the idea, exactly.

Q. And those shipments from Brooklyn would pass right through Cleveland?—A. Yes, sir.

14267 Q. Is there a switching charge between Brooklyn and Cleveland?—A. There is.

Q. Do you remember what that is?—A. $2.50.

Q. $2.50 a car?—A. The switching tariff is more extensive that that; $2.50 in some instances, 15 cents a ton in others, 25 cents a ton in others; and it varies according to the conditions, the commodity, the direction, what terminal facilities we give, etc. But between an industry having a private siding and a connecting line the charge would be $2.50 per car.

Q. It would be about half a cent a hundred?—A. On the average car; yes.

Q. On a 50,000-pound car?—A. Yes.

Q. And what about the existence of any common custom therein so far as the absorption of that switching charge is concerned?—A. That is common to the extent of the absorption of a charge equaling $2.50.

(Paper marked Defendants' Exhibit 398.)

Q. Did you ever hear of the long-and-short-haul clause of the interstate-commerce act?—A. Incidentally.

Q. Do you know enough about rate matters, tariffs, to know that there could not be a greater rate from Cleveland to Portland—A. Yes.

Q. ——over the B. & O. and Erie Despatch than from Brooklyn five miles south of Cleveland, over the same lines, through Cleveland?—A. Yes. We are familiar with that rule.

Q. So that whatever the tariff was from Brooklyn to Portland or New England points, by way of Cleveland, the tariff from

14268 Cleveland to those same points could not exceed the tariff from Brooklyn to these points, could it?—A. I so understand it.

Q. I show you defendants' Exhibit 398. What is that?—A. That is the Erie Despatch line divisions between Cleveland Terminal and Valley Railroad points and eastern points, via Cleveland, and the Erie Railroad and connections.

Q. That is the division sheet that you have just been referring to?—A. That I have referred to. yes, sir.

Q. Does that purport to have been filled with the Interstate Commerce Commission?—A. That I can not tell you. I don't know what the rule is on division sheets. I am not qualified to say.

Q. Do you know whether the Cleveland Terminal and Valley Railroad is now a part of the B. & O.?—A. It is operated by the B. & O. The Cleveland Terminal and Valley Railroad is supposed to be part of the Baltimore and Ohio system. Now, I am employed by the Cleveland Terminal and Valley Railroad, but I draw my pay from

the Baltimore & Ohio. What their internal arrangement is, of course I am not qualified to say.

(Paper marked defendants' Exhibit 398–A.)

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 398 and defendants' Exhibit 398–A, which is a supplement to division sheet defendants' Exhibit 398.

Redirect examination by Mr. KELLOGG:

Q. Mr. Witzel, was any oil shipped from Brooklyn station?—A. To what?

Q. Is there any oil shipped from Brooklyn station?—A. Well, I know of no oil refinery there.

14269 Q. Did you used to be familiar with that station?—A. Why, only in so far as the business that we transact between Brooklyn station and Cleveland.

Q. Where is oil delivered to the Baltimore & Ohio Railroad for shipment out of Cleveland?—A. It may be delivered in various ways. In less than car-lot shipments it might be delivered on the platform of any one of our depots. In car-lot shipments for transportation in box cars or cars of that character, when put up in barrels or similar packages, it might be delivered at any team track.

Q. Yes, I understand.—A. In carloads it might be delivered to us by any one of our connections.

Q. Certainly. Have you ever received any oil to be shipped over the Baltimore & Ohio Railroad at Brooklyn?—A. To the best of my knowledge, no.

Q. Where do you receive it? At your other stations in Cleveland?—A. At the Cleveland station, yes.

Q. The Baltimore & Ohio Railroad has a line of its own from Cleveland to New York by the way of Baltimore, has it not, or in connection with——A. Yes; it has several routes.

Q. And the Erie Railroad has a line from Cleveland to New York?—A. Yes, sir.

Q. Suppose oil was delivered to you at Brooklyn to be shipped to you inland, what route would it take and what rate would apply?—A. Well, I am not agent at Brooklyn; but if I were—is that the idea?

Q. Yes, sir.—A. If nothing was said on the directions given me by the shipper I would send it east by the B. & O.

Q. And under your own tariff?—A. Under our own tariff.

14270 Mr. ROSENTHAL. That is, you would get the biggest rate that you could?

The WITNESS. Certainly.

Mr. ROSENTHAL. Over your own road; give your own road the longest haul?

The WITNESS. If there were no restrictions in the shipping order, why, we would give our own line the benefit of the longest possible haul.

Mr. ROSENTHAL. Certainly.

Q. I show you the Erie tariff, I. C. C. No. 114, on petroleum and its products, from Cleveland to Boston and other points. Under the restrictions of that tariff could the Erie Railroad, in connection with its own despatch book, make the Boston rate to Portland?—A. I could not answer that offhand. I would have to read the tariff very carefully, Mr. Kellogg.

Q. Haven't you examined it?—A. No.

Q. You have not?—A. No; I have not seen it. I should not want to testify to that without looking at it more or less carefully.

Q. Well, look at that and see if you can. [Handing book to the witness.]—A. It would depend, according to this, upon the delivery required in New England. Now, I do not know what arrangements the Erie may have with other connections, other than those specified.

Q. Well, we will show that by somebody else. There is no other route to Portland, except the Boston & Maine, is there?—A. Not that I know of.

Q. Could it make that rate in connection with the Boston
14271 & Maine?—A. It could not.

Q. Could it make that rate to any of the New York, New Haven & Hartford towns?—A. It could not. The same restrictions.

Q. Could it make that rate to any point on the New England Railroad?—A. No.

Mr. ROSENTHAL. You mean by that, Mr. Witzel, that this particular Erie tariff which Mr. Kellogg is showing you did not make a rate via these connections?

WITNESS. Yes.

Mr. ROSENTHAL. Not that the Erie road could not make a rate?

WITNESS. No.

Mr. KELLOGG. Oh, well, they could put in another tariff.

Q. This tariff contains the following restriction, does it not: "For points off the Erie Railroad, taking Rochester, Hornellsville, Elmira, Boston, Philadelphia, Baltimore, and Albany rates, see current Erie Despatch eastbound billing instructions, except to points on Boston & Maine Railroad not shown on page 6, and points on New York, New Haven & Hartford Railroad, New England Railroad, and Philadelphia, Reading & New England Railroad, to which points Boston rates will not apply?" Is that the restriction you refer to?—A. That is the restriction I refer to.

(Paper book marked "Petitioner's Exhibit 1016.")

Mr. KELLOGG. I offer this Erie tariff in evidence [petitioner's Exhibit 1016] in connection with the restriction I read and the towns named on page 6 therein referred to, and ask that those towns be copied into the record in connection with the restrictions.

14272 The balance of the tariff, it is understood, may be used in the argument, without printing it, under the general stipulation in this case.

Mr. ROSENTHAL. I object to it upon the ground that it is immaterial.

Q. Do you know whether those towns are what is commonly known as the Fitchburg Division of the Boston & Maine?—A. I could not

tell you as to that. I do not follow the tariffs closely enough or frequently enough to keep in touch with the situation.

Mr. KELLOGG. We also want to put in the title page, and it is to be referred to under the general stipulation we have already made.

Q. Suppose a car of oil had been delivered to you at Cleveland, with directions from the shipper that it be shipped via the Erie Despatch; what would you have done under those tariffs?—A. Told the shipper I could not handle it.

Q. Suppose he insisted on turning it over to the Erie; what would you do?—A. Then I should be obliged to take it up with my superiors.

Q. You would not have carried it under those tariffs?—A. I could not. I had no instructions.

Mr. ROSENTHAL. That is, under this last Erie tariff that has just been shown you?

WITNESS. No, Mr. Rosenthal, under the original 4,538, via Erie Despatch.

Mr. ROSENTHAL. Oh, from Cleveland.

WITNESS. From Cleveland.

Mr. ROSENTHAL. Without having a division sheet?

WITNESS. Yes. There is a distinction which I draw there between Brooklyn and Cleveland, you understand.

14273 Mr. ROSENTHAL. Yes, I understand.

A. The long-and-short-haul clause would not have had anything to do with that if you did not have a tariff?—A. No; we did not have the per cents.

Mr. ROSENTHAL. He has not said they did not have a tariff.

WITNESS. That would, however, be a matter for consideration by my superiors in case any question——

Mr. ROSENTHAL. What would be?

WITNESS. Any of those obscure points.

Mr. ROSENTHAL. That is, as to whether or not they would take a shipment——

WITNESS. Yes.

Mr. ROSENTHAL. Over the Erie?

WITNESS. They would authorize——

Mr. ROSENTHAL. Without your having a division sheet in your possession, in your office?

WITNESS. Yes.

Mr. ROSENTHAL. That would be a matter for your superior officers to determine and not for you to determine?

WITNESS. That is the idea.

Q. What is the billing-instructions book that you use?—A. I do not know the number of it.

Q. Your line, I mean.—A. We call it "the eastbound billing book." I do not know what the official——

Q. The Baltimore & Ohio has a billing book of its own?—A. Yes.

Q. What do you call it?—A. "Eastbound billing instructions." We also have the Central States Despatch book.

14274 Q. That is a Baltimore & Ohio line?—A. It runs over the Baltimore & Ohio in connection with others.

Q. Are those the billing instructions that you use on your own lines?—A. Yes.

Q. Did you ever hear of any shipment of any kind going on your line on an Erie billing instruction?—A. No, sir.

Mr. LOWN. What was that question?

Mr. KELLOGG. Did you ever hear of any shipment of any kind going on your line on an Erie billing instruction?

WITNESS. Out of Cleveland, on the Erie billing instructions.

Mr. KELLOGG. Yes; that is what I mean.

Recross-examination by Mr. ROSENTHAL:

Q. Do you use all of the fast freight line billing books? Have you them there in your office?—A. Do you mean all that operate over the B. & O.?

Q. Yes.—A. Yes. Well, there is only the one.

Q. What are they?—A. Well, the two—what we call the Continental Line, that is really the B. & O.; but the Central States Despatch is the only fast freight line.

Mr. LOWN. The Red Line, from B. & O. points, via Cleveland?

WITNESS. Yes, by way of Cleveland.

Mr. LOWN. You have their book, then?

WITNESS. Yes.

Mr. LOWN. Can the Erie operate via Cleveland?

WITNESS. Yes.

14275 Mr. LOWN. From B. & O. points?

WITNESS. No, except from—yes, they do, from some points.

Mr. LOWN. It gives it on this division sheet.

WITNESS. It used to. I can not tell you now whether they do or not.

Mr. LOWN. The White Line?

WITNESS. The White Line, the Red Line and all.

Mr. LOWN. They all work from B. & O. points?

WITNESS. Yes.

Mr. LOWN. Some point beyond Cleveland, via Cleveland?

WITNESS. Yes.

Mr. LOWN. The same as this percentage sheet?

WITNESS. Yes; that is the idea.

Q. You do not mean that the Boston & Maine is the only line running into Portland, do you?—A. No; the only line shown in that tariff for Portland.

Q. The only line shown in the tariff that Mr. Kellogg showed you?—A. Yes.

Q. The Grand Trunk runs into Portland, does it not?—A. Yes, there are several railroads, but I do not recall which they are.

Mr. KELLOGG. I meant as shown in this tariff.

WITNESS. Oh, yes.

Mr. LOWN. The Grand Trunk also gets into Portland. It shows on there.

WITNESS. Yes, the tariff shows that.

Q. So that if the division sheet, or percentage sheet, had been issued as between the B. & O. and the Erie, the ship-
14276 ments could have been made under these two tariffs, from Cleveland, just the same as from Brooklyn?—A. Oh, yes.

Q. And if a shipment had been offered to you at Cleveland, to ship under these two tariffs, you, not being advised to the existence of a percentage sheet, would, on such an offer, have taken it up with your superior officer?—A. Yes.

Q. Why?—A. Because I would not know what to do with the shipment.

Q. Why?—A. I would not know whether to send that shipment to some eastern point, or possibly to Akron, at which point we have a connection with the Erie. I would not in fact know what to do with it. I would not have the slightest idea, without first consulting my superiors.

Q. Because you would not have any percentage sheet before you?—A. Because I had no percentage sheets showing at which point we might connect.

Q. But if your superior officer had such percentage sheet, you would then get your advice from him as to how to route the shipment?—A. Yes.

Q. Or if, upon such a shipment being offered, he would verbally agree with the Erie as to how the shipment should be routed and as to how the freight should be divided, you would then receive your instructions from him?—A. Yes, sir.

By Mr. KELLOGG:

Q. Both the Erie and the Baltimore & Ohio run from Cleveland to New York, do they not?—A. Yes, the B. & O.——

Q. Will you tell me how you could make a division sheet between the Erie and Baltimore & Ohio out of Cleveland, if the
14277 Baltimore & Ohio hauled the stuff? Do you know of any way?—A. They would not make a division sheet in a case of that kind.

Q. Do you think the Baltimore & Ohio would make a division sheet to turn over that freight to the Erie at Cleveland?—A. Well, what one of the traffic officers of the Baltimore & Ohio might do——

Mr. ROSENTHAL. They have it from Brooklyn, isn't it——

WITNESS. Which is a part of Cleveland?

Mr. KELLOGG. Just wait a minute till I get through.

WITNESS. What one of the traffic officers of the Baltimore & Ohio might do would be pretty hard for me to do.

Q. The Erie does not run to Brooklyn, does it?—A. Yes, sir.

Q. But they both run to Cleveland?—A. Yes, sir.

Q. If a shipment was coming from Brooklyn to Cleveland over the Baltimore & Ohio, and then going out over the Erie, it would be natural to have division sheets, would it not?—A. Yes, sir.

Q. Would it be natural or reasonable to have division sheets out of Cleveland for two roads that end there?—A. I should not think it would be.

Q. No. You would haul that stuff as far as Philadelphia over your own rails, would you not?—A. Yes.

Q. And you have running arrangements for all your trains to Communipaw?

Mr. ROSENTHAL. That is, you would if you could?

WITNESS. Yes.

Q. Would if you could. If you could get it?

14278 Mr. LOWN. If the shipper did not designate another route.

Q. If the shipper designated another, is there any reason to deliver it to your agent at Cleveland and then turn it over to the Erie?—A. In individual cases we have percentages which cause us to lose, and working arrangements which cause us to lose part of the rate; but that may be due to terminal reasons.

Q. Oh, certainly. But what I mean is, you have running arrangements whereby your trains run from Philadelphia to New York Harbor, do they not?—A. We have some sort of a traffic arrangement there.

Q. You know you run your trains over the Reading road and over the Jersey Central?—A. Yes, and over the Central of New Jersey.

Q. And connect with the New Haven road at New York Harbor, do you not?—A. Yes, sir.

14279 R. H. TROESCHER, called on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your full name?—A. R. H. Troescher.

Q. What is your position with the Baltimore & Ohio road?—A. At present chief clerk to the local freight agent——

Mr. ROSENTHAL. Where?

WITNESS. At Cleveland.

Q. What do you particularly have charge of?—A. I have general supervision of the office.

Q. Did you ever have charge of the outbound billing?—A. Yes, sir.

Q. Out of Cleveland?—A. Yes, sir.

Q. From February 1, 1904, to July 15, 1905, did you have charge of that billing?—A. Yes, sir.

Q. Would you bill out any oil, or have charge of any that was billed out at Cleveland?—A. Yes, sir.

Q. Did that office ever bill out any oil out of Cleveland to any New England point with the Baltimore & Ohio tariff I. C. C. No. 4538 and the Erie Despatch billing-book?

Mr. ROSENTHAL. I object to that upon the ground that it is wholly immaterial whether a pound of oil ever moved or not.

Q. You may answer.—A. No, sir.

Q. Have you had the billing examined, to be sure of that?—A. No, I have not examined the billing; but all of the
14280 billing I would rate it up, and it would come through me to start with.

Q. And you know about it personally?—A. I know about it personally.

Q. No such oil has been shipped?—A. No, sir.

Q. Could you use this I. C. C. tariff No. 4538? You are familiar with that, are you?—A. Yes, sir.

Q. Could you use that tariff in connection with the Erie Despatch eastbound billing instructions?—A. Not from Cleveland.

Q. Why?—A. There is no division sheet in effect.

Mr. ROSENTHAL. So far as you know?

WITNESS. So far as I know, yes.

Q. Aren't the local agents given the division sheet?—A. The local agent would be supplied with the division sheet.

Cross-examination by Mr. ROSENTHAL:

Q. How long have you been there?—A. With the B. & O.?

Q. As chief clerk?—A. Two years.

Q. Where were you before that?—A. I was rate clerk in the same department.

Q. For how long?—A. About seven years.

Q. Well, I don't suppose you know much about the petroleum industry generally, anyway, do you?—A. No, sir.

Q. You are a railroad man?—A. Yes, sir.

Q. And why oil might not have been shipped from Cleveland to New England points would be beyond your ken, would it not?—A. Yes, sir.

14281 Q. If oil refiners in great numbers away up in New York and Pennsylvania, several hundred miles nearer the New England points than Cleveland, preferred shipping from there rather than Cleveland, that might be one of the reasons why no petroleum moved from Cleveland into New England, might it not?—A. I can not say.

Q. You don't know about that?—A. I do not.

14282 FRANK LAUGHLIN, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Mr. Laughlin, are you in the employ of the Erie Railroad?—A. Yes, sir.

Q. Where?—A. Local freight agent at Cleveland, Ohio.

Q. How long have you been?—A. Since January 4, 1904.

Q. Prior to that time what was your position?—A. With the Erie at other points. I have been with the Erie twenty-two years. I have been local freight agent at Cleveland since January 4, 1904.

Q. I show you petitioner's Exhibit 1016, being the Erie tariff on petroleum from Cleveland, Ohio, taking effect March 12, 1906, and

effective until January 1, 1907. Was that tariff the tariff in force on the Erie Railroad during the time you were there?—A. Yes, sir.

Q. Did you have any other tariff out of Cleveland to New England?—A. Not to my knowledge; no, sir.

Q. That is the only one you know of?—A. Yes, sir.

Q. Under that tariff could you ship oil over the Erie Railroad from Cleveland, Ohio, to any point in New England, except those points named on page 6 of this tariff, and in evidence, on the Boston rate? Of course, that excepts Boston itself.—A. We could not; no, sir.

Q. Why?—A. Why, it states in a note here: "For points off the Erie Railroad taking Rochester, Hornellsville, Elmira, Boston,
14283 Philadelphia, Baltimore, and Albany rates see current Erie Despatch Eastbound Billing Instructions, except to points on B. & M. R. R. not shown on page 6, and points on New York, New Haven & Hartford Railroad, New England Railroad, and Philadelphia & Reading and New England Railroad, to which points Boston rates will not apply." Will you turn to page 6, which is in evidence and contains a list of towns?—A. Yes, sir.

Q. Do you know whether those towns are the towns on the line known as the Fitchburg Railroad?—A. I could not say positively, but I am under the impression that they are.

Q. Then, the Boston rate, with the exception on those towns, under the Erie tariff would not apply to any New England towns, would it?—A. Except as shown on page 6.

Q. Yes; that is what I mean. Except those towns?—A. Yes, sir.

Q. Generally, what did they charge—an arbitrary over Boston, or local rates?

Mr. ROSENTHAL. If you know.

A. Well, I don't know. To be frank with you, I do not know just what the rates are.

Q. But you know that you did not prorate with them on through rates?—A. No, sir; we did not.

Q. I show you the Baltimore & Ohio tariff, I. C. C. No. 4538, together with the Erie Despatch billing instructions No. 15, I. C. C. No. 2. Do those tariffs name a rate on the Baltimore & Ohio Railroad in connection with the Erie Despatch billing book out of Cleveland, Ohio, to New England points, other than Boston, I mean?—A. I believe it named the rates; yes, sir.

14284 Q. I mean could shipments be made under those from Cleveland, Ohio?—A. No, sir.

Q. Why?—A. We have no working arrangement or division sheet from Cleveland, Ohio, in connection with the Erie Despatch.

Q. That is, the Baltimore & Ohio has not. The Erie Railroad does not run to Brooklyn, does it?—A. Yes, it does; yes, sir.

Q. They have a station at Brooklyn?—A. By ferry; yes, sir.

Q. I don't mean Brooklyn, New York; I mean Brooklyn, Ohio.—A. No, sir.

Q. Of course the Erie Railroad runs from Cleveland to New York Harbor?—A. Yes; to the Jersey City Terminal.

Q. And connects with the New York, New Haven & Hartford, does it not?—A. At Campbell Hall Junction.

Q. The Erie Railroad takes shipments from Cleveland—oil and other products—to New York Harbor, does it not?—A. Yes, sir.

Q. What is the Erie Despatch Eastbound Billing Instruction? Is that an Erie line?—A. It operates over the Erie Road and connections; yes, sir.

Q. Now, for instance, Eastbound Billing Instructions No. 15 via the Erie Railroad and connections——A. Yes, sir.

Q. ——Is that a billing instruction which could be used with the Baltimore & Ohio out of Cleveland?—A. No, sir.

Q. That billing instruction is only a billing instruction for shipments over the Erie road, in connection with the Erie road alone, or its connections, is it not?

Mr. ROSENTHAL. I object to that on the ground that government counsel is testifying, and not the witness.

14285 Q. Well, state whether that is a billing instruction for a line operating over the Erie road itself.—A. Well, it is a Despatch line. It also operates over the B. & O.—part of the B. & O.—what is known as the C. T. & V.

Q. As a connection, simply?—A. Yes, sir.

Q. Suppose the Baltimore & Ohio had tendered you a shipment of oil at Cleveland for a New England point other than Boston, say, under what tariff would you have handled it?—A. Originating at Cleveland?

Q. Yes; originating at Cleveland.—A. Well, now——

Q. Would you accept billing from the Baltimore & Ohio, of oil, to New England points, from Cleveland? Would you bill it yourself on your own rates—that is the question.—A. It would necessarily have to be billed out of Cleveland under our tariff. It could not be billed out under the——

Q. Baltimore & Ohio?—A. Baltimore & Ohio tariff.

Q. Do you know whether there is any refinery at Brooklyn, Ohio, or any shipments of oil from that place?—A. I don't know.

Q. You don't know about that?—A. No, sir.

Q. Did you ever receive any oil from that place?—A. Not to my knowledge; no, sir.

Q. Did you ever receive any oil to switch from there to your line?—A. Not to my knowledge.

Q. Suppose you had received oil that was switched from Brooklyn to your line in Cleveland; how would you have shipped that to New England? Under your tariff or under some other?—A. No; that could have been handled under the B. & O. tariff

14286 from Brooklyn, Ohio.

Q. Yes; but how would you have handled it? Would you permit them to bill oil through from Brooklyn, Ohio, to New Eng-

land, going all the way over your line, except that little switching space?—A. Yes; because we have divisions in from Brooklyn, Ohio.

Q. If you should receive such a car, with your restrictions in your tariff and your billing instructions, what would you do with it? Would you send it through or hold it up?—A. It would depend on what point it was going to.

Q. I mean to New England, other than Boston. Portland, Maine, for instance?—A. We would have had to allow the shipment to go forward to Portland, Maine.

Q. Are you familiar with this Grand Trunk tariff?—A. No, sir.

Q. When did you see it? Did you ever see it?—A. To-day is the first time that I saw it.

Q. Did you look it over carefully?—A. I did not; no sir; only in a general way; hastily.

Q. The National Despatch-Great Eastern Line—did you look that over?—A. Just in a general way. Just as I say, I did not spend much time on it. I would not want to pass on a thing of that kind without——

Q. That is all.

(No cross-examination.)

14287 A. W. SHEAHEN, called on behalf of the petitioner, in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your name?—A. A. W. Sheahen.

Q. What road are you employed by?—A. Detroit & Toledo Shore Line, and Toledo, St. Louis & Western, joint.

Q. Does the Detroit & Toledo Shore Line connect with the Toledo, St. Louis & Western?—A. Yes, sir.

Q. Where?—A. At Toledo.

Q. What is the Toledo, St. Louis & Western usually called?—A. The Clover Leaf.

Q. The Clover Leaf and the Shore Line connect at Toledo?—A. Yes, sir.

Q. What connection has the Shore Line with New England business? Connection with the Grand Trunk?—A. Grand Trunk; yes, sir.

Q. Where?—A. At Detroit.

Q. At Detroit?—A. West Detroit.

Q. Are you the joint agent, did you say?—A. Yes, sir.

Q. At Toledo?—A. Yes, sir.

Q. How long have you been?—A. Since September, 1903.

Q. Are you in charge of the Toledo office?—A. Yes, sir; at Toledo proper.

Q. Are you familiar with the tariff which I show you, I. C. C. No. 944, known as the Grand Trunk and Shore Line tariff on petroleum and its products, in effect from December 12, 1904, to Decem-

14288 ber 12, 1905?—A. Yes, sir; I have seen the tariff.

Q. Are you familiar with the National Despatch-Great Eastern Shipping Agents' Guide billing book?—A. Yes, sir; I have also seen that.

Q. State whether any shipments of oil were made to New England points under that tariff under the year it was in effect.—A. Not via our station; no, sir.

Mr. ROSENTHAL. Not via what?

WITNESS. I say, not via our station.

Q. What other station was there in Toledo?—A. Manhattan Junction.

Q. Who was in charge of that?—A. Mr. W. L. O'Brien, agent.

Q. There are refineries at Toledo, are there?—A. Yes, sir; located at Ironville, Ohio—a suburb.

Q. Near Toledo?—A. Yes, sir.

Q. From what stations would oil be shipped via the Shore Line and the Grand Trunk?—A. Manhattan Junction.

Q. None was shipped from your station?—A. No, sir.

Q. Have you examined that tariff in connection with the billing instructions?—A. Yes, sir.

Q. Taking the two together, in your opinion do they make the Boston rate to any New England town—except Boston itself, I mean?—A. No, sir.

Q. Why?—A. On account of the note on page 1 of the National Despatch-Great Eastern Line Guide.

Q. What is that note? Please read it.—A. "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested."

Q. Does the fact that the tariff is of a later date than the billing book change your opinion?—A. No, sir.

14289 Q. Who first called your attention to this?—A. Mr. Schindler.

Q. Did Mr. Schindler ask your opinion as I have done?—A. Yes, sir.

Q. Did he state to you his opinion on anything, or just ask you?—A. He asked my opinion. He did not state his opinion before I expressed myself.

Q. Have you ever quoted any rates to New England points, do you know, under that?—A. No, sir.

Cross-examination by Mr. ROSENTHAL:

Q. What do you say your position at Toledo is?—A. General agent for the Toledo, St. Louis & Western, and Detroit & Toledo Shore Line Railway.

Q. You are the general agent there?—A. Yes, sir.

Q. What does that mean?—A. In charge of the local freight department.

Q. You are the local agent?—A. Yes, sir. My title is general agent.

Q. You are the local agent of that line, located at Toledo?—A. Yes, sir.

Q. How long have you been there?—A. I have been agent for the Clover Leaf since December, 1904; for the Shore Line since they started running in there, in September, 1903.

Q. And I presume you are frequently called upon to interpret and construe tariffs?—A. No, sir.

14290 Q. About how often would you say, in ten years?—A. I couldn't say. That all depends upon the nature of it. When some question comes up about some rate, or somthing like that, or some application of the tariff, my attention might be called to it.

Q. Otherwise, who would cover that?—A. We have a rate clerk. We have two rate clerks in our office.

Q. A rate clerk who is an expert on those matters?—A. Yes, sir.

Q. You have to do with many other things besides mere freight matters?—A. Yes, sir.

Q. Your position is a more general position? In other words, you are the chief executive officer of that local station?—A. Yes, sir.

Q. And among other clerks that you have under you is a rate clerk, whose duty it is to quote rates?—A. Yes, sir.

Q. That is not a part of your duties?—A. No, sir.

Q. Do you know H. C. Martin?—A. No, sir.

Q. Are you an employee of the Grand Trunk Railway system?—A. No, sir.

Q. Of what railway system? The Detroit, Toledo & Shore Line?—A. Yes, sir.

Q. The Detroit & Toledo Shore Line Railroad is owned jointly by the Grand Trunk and the Clover Leaf, is it not?—A. Yes, sir.

Q. Now, on this very tariff, I. C. C. No. A–944, appears the
14291 name of H. C. Martin, chief of tariff bureau, Chicago, Ill. Do you observe that [showing paper to witness]?

A. Yes, sir.

Q. What does that mean?—A. Why, he is the man that published the tariff.

Q. He is the man that issued that tariff?—A. Yes, sir.

Q. Would you, with your experience as a tariff expert, in the interpretation of tariffs, set up your judgment as to what that tariff means as against Mr. Martin's—the man who issued it?—A. I have simply given you my opinion.

Q. Now, please answer my question.—A. In this case, yes, sir.

Q. Would you back your judgment as against the judgment of the man who issued the tariff and who interprets it?—A. Yes, sir.

Q. The chief of the tariff bureau of your line?—A. Yes, sir.

Q. Suppose a controversy arose between you and Mr. Martin as to a proper interpretation of that tariff, by whom would you be guided—your own judgment or the judgment of the chief of your tariff bureau?—A. I would require written authority from the superior officer in charge of the traffic department of our railroad.

Q. Who would that be?—A. Mr. J. P. Main, traffic manager.

Q. Suppose you were in doubt about the interpretation of that tariff, to whom would you refer the matter?—A. To Mr. J. P. Main, traffic manager, at Detroit.

Q. Is his name on there?—A. No, sir; it is not on this
14292 tariff.

Q. How many tariffs of that kind have you ever been called upon to interpret?—A. This is the first one.

Q. Have you ever had a question like this before you in your life, until this question was put up to you?—A. No, sir.

Q. How many tariffs, in your railroad history, have you been called upon to interpret?—A. I suppose about a hundred.

Q. That is all?—A. That is about all.

Q. And that experience extends over how many years, in which you have been called upon to interpret perhaps a hundred tariffs?—A. About fifteen years.

Q. You don't regard yourself as a tariff expert, do you?—A. No, sir.

Q. And you don't regard yourself as expert in the interpretation of tariffs as your chief rate clerk there, who is in the matter every day and every hour of the day, do you?—A. It depends upon what is at issue.

Q. What?—A. In this case I know it is very plain to me.

Q. That is, you think——A. Yes, sir.

Q. —— in this case, that the note is so clear and so plain that there could not be the slightest question about it?—A. Yes, sir.

Q. And your judgment would not be shaken if eight or ten of the leading freight tariff experts in the country under oath had already testified to just the contrary of what you have testified?—A. No, sir.

14293 Q. It would not affect your judgment in the slightest degree?—A. No, sir.

Q. Now, that opinion of yours is based upon the note which you read, and which you find in the National Despatch-Great Eastern Line on page 1?—A. Yes, sir.

Q. Excepting petroleum from the billing instructions of that National Despatch book?—A. Yes, sir.

Q. And the gist of that note is that it must not be taken under the instructions of this Guide, but that such shipments will be subject to special tariffs. What do you understand by that?—A. Special tariffs?

Q. Yes, what do you understand that rule to mean or that exception to mean?—A. I would understand that, that special tariffs would have to be provided for and printed—filed.

Q. Suppose a special tariff had been issued after this National Despatch-Great Eastern Line No. 9, a special petroleum tariff, what then? Does the special tariff alone govern, or does the special tariff govern in connection with the National Despatch?—A. If the special tariff showed the stations or the points to which the rates were named, I would say the special tariff governed.

Q. What do you understand the reference to the National Despatch-Great Eastern Line upon the face of tariff I. C. C. No. A-944 to mean?—A. I would say——

Q. Do you see what I mean? You are not looking at it.

Mr. KELLOGG. Point him the place.

Mr. ROSENTHAL. Right on the front sheet.

(The witness was shown a portion of the tariff.)

14294 Mr. KELLOGG. Read the whole thing in connection with it.

WITNESS. "Commercial Express Line"——

Q. I don't ask you to read it aloud. Read it to yourself and tell me what it means, in your judgment, as a tariff expert.—A. It would mean that this tariff is governed by the instructions of the N. D.-G. L. guide book.

Q. It would mean that the tariff I. C. C. A-944, which you hold in your hand, is governed by what?—A. By the N. D.-G. L.——

Q. By the National Despatch-Great Eastern Line?—A. Yes, sir.

Q. What does that mean—that the two of them must be taken together for the purpose of determining the rate?—A. Well, my opinion——

Q. No—what does that mean, just that one thing? You haven't any doubt about that, have you?—A. I have no doubt about that note; no.

Q. Well, then, what does it mean?—A. Well, this tariff refers you to the N. D.-G. L. book for——

Q. This tariff——

Mr. KELLOGG. Let him finish.

Q. This tariff I. C. C. No. A-944 refers you to No. 9 of the National Despatch?

Mr. KELLOGG. Let the witness finish.

WITNESS. And one conflicts with the other, from the note in that book.

Q. One conflicts with the other because of the note in the

14295 National Despatch book, is that right?—A. Yes, sir; that is my opinion of it.

Q. It is because of that conflict that you say that the two must not be taken together in the making of a rate, is that right?—A. Excepting points named in this tariff.

Q. For example, what points named in that tariff? What have the points named in that tariff to do with the National Despatch?—A. Well, for instance, name a rate to Boston——

Q. No, no. What is there in that tariff I. C. C. A-944 that shows any relationship between the points named in the tariff and the National Despatch?—A. This note refers to these N. D.-G. L. instruction books governing this tariff.

Q. For what purpose?—A. To get your divisions of rates and your basing point.

Q. What is there on there that indicates that is the purpose?—A. Governed by the N. D.-G. L. Shippers' Guide instruction book.

Q. Does it say that?—A. Yes, sir; that is the way I would interpret it.

Q. Does it say that? Yes or no.—A. Yes, sir.

Q. Well, read it—just what it says.—A. Do you want me to read all these railroads?

Q. Read just what you say it says there, if it is on there.

Mr. KELLOGG. Yes, read them all to him if he wants them.

A. (Reading.) "Grand Trunk Railway System. Lines west of Detroit and St. Clair rivers, and Detroit & Toledo Shore Line Railroad, in connection with"—shall I read all these railroads?

14296 Q. Well, you answer my question, please.

Mr. KELLOGG. Go ahead.

WITNESS. (Reading.) "Atchison, Topeka & Santa Fe Ry., Boston & Albany R. R., Boston & Maine Railroad, Buffalo, Rochester & Pittsburg"——

Mr. ROSENTHAL. Now read the witness my question. Please answer the question.

(The reporter read the following questions and answers: "Q. What is there in that tariff I. C. C. A–944 that shows any relationship between the points named in the tariff and the National Despatch?—A. This note refers to those N. D.-G. L. instruction books governing this tariff. Q. For what purpose?—A. To get your divisions of rates and your basing point. Q. What is there on there that indicates that is the purpose?—A. Governed by the N. D.-G. L. Shippers' Guide instruction book.")

Q. Now, then, you said that "governed by the N. D.-G. L." was on there, did you not?—A. Yes, sir.

Q. Are those words on there—"governed by the N. D.-G. L.?"—A. Not in that same language.

Q. What language is there on that tariff that is the equivalent of the language "governed by the N. D.-G. L.?"

A. The tariff is headed "Grand Trunk Railway System, Detroit & Toledo Shore Line Railroad," and names a whole lot of roads "and connections as specified in the following Agents' Guides and Billing Lists: Commercial Express Line, Grand Trunk Despatch, National Despatch-Great Eastern Line, Lackawanna Grand Trunk Line"——

14297 Q. You needn't read them all. Then what? What does that mean?—A. It means that this tariff is covered by the different guide books published by the various lines named in this tariff.

Q. Yes, it means that the tariff I. C. C. No. A–944 is governed, among others, by the National Despatch-Great Eastern Line, doesn't it?—A. Yes, sir.

Q. Now, if the rule on page 1 of the National Despatch-Great Eastern Line expressly excepted petroleum, so that the National Despatch-Great Eastern Line had no reference to petroleum, can you tell me why the National Despatch-Great Eastern Line is referred

to upon this special petroleum tariff I. C. C. A–944, issued almost two years after the National Despatch-Great Eastern Line was issued?—A. I would say that referred to the National Despatch-Great Eastern Line book to obtain to intermediate points or points taking the same rates as named in that tariff.

Q. Yes, but what is there on tariff I. C. C. A–944 that warrants you in so interpreting it?—A. The note I just read.

Q. That is the only thing?—A. Yes, sir.

Q. So that is the basis of your whole interpretation?—A. Yes sir.

Q. That simple little note that you just read?—A. Yes, sir.

Q. On page 2 of tariff I. C. C. No. A–944 I call your attention to the line "For list of stations to which above rates apply see various Fast Freight Line billing instructions." Do you
14298 observe that?—A. Yes, sir.

Q. What does that mean?—A. Naming rates from various points to stations shown in the tariff.

Q. In other words, the man who made this tariff, just above the line which you have just read, among other stations names Boston, Massachusetts, showing the rate to be 27 cents, does he not?—A. Yes, sir.

Q. And that line "For list of stations to which above rates apply" (that is, Boston rates) "see various fast freight line billing instructions," then, would mean what, so far as the Boston rates are concerned? That you would have to consult the fast freight line billing instructions, such as No. 9 of the National Despatch-Great Eastern Line——A. Yes, sir.

Q. ——for the purpose of getting the other New England stations from that National Despatch-Great Eastern Line to which the Boston rates apply?—A. Yes, sir.

Q. That is what that means, isn't it? It can't mean anything else, can it?—A. That is my understanding of it.

Q. Now will you look at the National Despatch-Great Eastern Line No. 9 and give me the names of some of the stations in there to which Boston rates apply?—A. I can give you one; Portland, Maine.

Q. That is, the same rate as applies from Toledo to Boston applies from Toledo to Portland, Maine, is that right?—A. Yes, sir.

Q. Where do you find that in the National Despatch?—A. On page 52.

Q. On page 52 of the National Despatch what do you find
14299 which indicates that the Boston rate from Toledo to Boston is applied to Portland?—A. The book quotes Boston rates to apply.

Q. Read what it says.—A. "Portland, Maine; railroad, Grand Trunk; way-bill to Portland;" rates to apply, Boston; divisions to be used, Portland.

Q. What other stations in New England are named in the National Despatch-Great Eastern No. 9, which you hold in your hand, besides Portland, Maine, that take the Boston rate from Toledo?—A. Portsmouth, New Hampshire.

Q. What others?—A. Potter Place, New Hampshire.
Q. All on page 52?—A. Yes, sir.
Q. What others?—A. Pownal, Maine.
Q. Burlington, Vermont?—A. Burlington, Vermont, yes, sir, on page——
Q. How many pages are there in that Great Eastern book, of stations specifically named, that take Boston rates from Toledo?—A. I could not answer that question.
Q. Just look at it, please. How many pages are there that show stations taking Boston rates?
Mr. KELLOGG. Examine each page and see.
Q. Oh, approximately. A great many of them?—A. Yes, the Boston rate is on nearly every page here.
Q. How many pages?—A. 21 to 68, inclusive.
Q. Now, getting back to this line on page 2 of the tariff I. C. C. No. A-944, "For list of stations to which above rates apply, see various fast freight line billing instructions," if you wanted to get
14300 all of the New England towns to which the Toledo-Boston rate on petroleum applied, you would find them by referring to that National Despatch-Great Eastern Line No. 9, would you not?—A. Yes, sir.
Q. Between the pages that you just indicated?—A. Yes, sir.
Q. So that if a shipper wished to ship petroleum from Toledo to Portland, Maine, if you please, or from Toledo to Burlington, Vermont, or from Toledo to any of the other New England points named between those pages that you have just indicated in this National Despatch-Great Eastern No. 9, you would first take the tariff I. C. C. No. A-944, of the Grand Trunk Railway System, would you not, and turn to page 2, and see from that tariff that petroleum from Toledo, Ohio, to Boston took a 27-cent rate?—A. To Boston proper?
Q. To Boston proper, yes.—A. Yes.
Q. And then you would refer to No. 9 of the National Despatch-Great Eastern Line, issued in 1903, which you hold in your hand, and see if Portland, Maine, or Burlington, Vermont, in that last named book took Boston rates, would you not?—A. Yes, sir.
Q. And if you found that those towns did take Boston rates (from such examination) you would give the shipper of petroleum the 27-cent rate from Toledo, would you not?—A. No, sir.
Q. Why not?—A. Because of the note on page 1 there.
Q. Because of the note which you find in the Great Eastern billing instructions you would not give him that rate?—A. No, sir.
14301 Q. And that is the only reason that you would have?—A. That is the only reason.
Q. Then you interpret this tariff I. C. C. No. A-944, so far as New England points are concerned, as only making a rate to Boston?—A. Yes, sir.
Q. And under that tariff, A-944, you would say that the shipper of petroleum from Toledo could only ship to Boston?—A. No, sir.

Q. To what other points in New England?—A. If he offered the shipments, we would take it up with the traffic department.

Q. Oh, no, I mean on the tariff itself.—A. Only to the points named in the tariff.

Q. Only to the points named in the tariff?—A. Published in the tariff.

Q. Then what does the maker of this tariff mean by the line "For list of stations to which above rates apply see various fast freight line billing instructions?" What does that mean?—A. I can't answer that.

Q. I thought you couldn't. Well, you did answer it at great length here a while ago, when you pointed out those forty or fifty pages of New England towns, didn't you?—A. You ask me why that was put in there?

Q. Yes.—A. Well, I can't answer that.

Q. Who is Mr. Ira W. Gantt?—A. Division freight agent of the Grand Trunk Railway system at Toledo, Ohio.

Q. Is he your superior?—A. No, sir.

14302 Q. Do you have any relations with him at all?—A. Just in a business way. He is not our superior officer. He is working for the Grand Trunk, and I am employed by the Shore Line.

Q. The Shore Line is operated in part by the Grand Trunk?—A. Yes, sir.

Q. I show you defendants' Exhibit 195. That is a copy of an original letter written by Mr. Ira W. Gantt to Mr. H. C. Martin, chief of the tariff bureau at the time that this tariff I. C. C. A-944 was issued. Will you please read that letter?—A. "Toledo, Ohio, September 10"——

Q. No—read it to yourself, I mean.—A. Oh, excuse me.

Q. Have you read it?—A. Yes, sir.

Q. Mr. Martin has testified that when he received that letter from Mr. Gantt he thereupon constructed this tariff I. C. C. A-944, and that he constructed and issued tariff I. C. C. No. A-944 because of the request which Mr. Gantt made of him in that letter. Now, having that in mind, can you imagine what eastern United States points Mr. Gantt requested Mr. Martin to construct a petroleum tariff from Toledo to?—A. No, sir.

Q. And that letter, to your mind, does not throw any light upon the situation whatever?—A. I couldn't explain it.

Q. You couldn't explain this letter. Have you read all of tariff I. C. C. No. A-944?—A. Read all of it?

Q. Yes.—A. I believe I have. I don't just remember.

Q. From beginning to end?—A. Yes, sir.

14303 Q. What?—A. I believe so.

Q. When did you do that?—A. A couple of months ago.

Q. What?—A. About two months ago.

Q. And did you read all of the National Despatch-Great Eastern Line billing instructions No. 9?—A. No, sir.

Q. How much of that did you read?—A. The first page.
Q. Only the first page?—A. Yes.
Q. So your entire opinion is based upon merely an examination of the first page?—A. The note on page 1 of that book.
Q. What did Mr. Schindler say to you when he talked with you?—A. He asked me about this note in the N.D.-G.L. book.
Q. No—what did he say?—A. He asked me my opinion of it.
Q. What did he say? Give me his exact language.—A. He said, "What is your opinion of this note in the N.D.-G.L. book," and he had the book out and read the note. He says, "Doesn't that conflict with this tariff?" or "Doesn't the tariff conflict with this note?" I don't remember just the exact words. I read it over and studied it a while, and said that it did.
Q. How long did you look it over and study it?—A. About three or four hours.
Q. And where was Schindler in the meanwhile?—A. He was in our building; in our office.
Q. You studied that for three or four hours?—A. Well, we looked it up——
Q. Whom do you mean by "*we* looked it up?"—A. The
14304 chief clerk and myself. Mr. Schindler spoke about this note in the morning, and we looked it up after he had gone away. He came back in the afternoon and I told him what I thought it——
Q. That is, you and your chief clerk studied the thing over there for three or four hours and talked about it?—A. Yes, sir. We talked to several about it.
Q. You talked to what?—A. We talked to several clerks around the office about it—rate men.
Q. What did you do that for?—A. Why, we were rather surprised to find that note in the book, conflicting with the tariff.
Q. But why did you talk to the clerks around the office?—A. So they would all understand it and to see what each and every one of them thought—what their opinion was.
Q. You wanted to get the opinion of the other clerks about the office, did you?—A. I wanted to show them—to let them know what it was.
Q. Why?—A. Because it seemed to be a live topic.
Q. When did you first express your opinion?—A. I don't remember the exact date. It was in the afternoon.
Q. I mean, was it after you had studied it for three or four hours and talked with these other clerks about it?—A. I was the first one to say to the others that that didn't apply.
Q. How long a study of these tariffs did it take on your part before you reached that conclusion?—A. I read it and had several
others read it, and asked their opinion of it, and they all
14305 seemed to be of the same opinion that I was; so I felt convinced that it must be right.
Q. That is, because the other clerks about the office there were of the same opinion that you were——A. Yes, sir.

Q. That satisfied you that you must be right about it; is that right?—A. The reading of it; the more I read it, the more——

Q. Well, did that help to satisfy you that you were right?—A. Yes, sir.

Q. And when was it that you first became satisfied that you were right?—A. The first time I read it.

Q. The very first time that you read it?—A. Yes, sir.

Q. And how long was that after you got hold of it?—A. About a minute, I suppose.

Q. So it took you just about a minute to make up your mind?—A. Yes.

Q. And then after having made up your mind in a minute, what did you do? Took three or four hours with the other clerks?—A. We discussed it pro and con with the other clerks.

Q. Well, what was there "con?"—A. Well, there wasn't any "con."

Q. There was no "con" at all?—A. No.

Q. It was all "pro," was it?—A. All "pro;" yes.

Q. Then you misspoke yourself when you said you discussed it "pro and con?"—A. Yes, sir. I will stand corrected.

Q. There was only one side to it?—A. Yes, sir.

Q. There wasn't any possibly conceivable other side?—A. There weren't any of the clerks——

Q. There isn't any other——

Mr. KELLOGG. Let him answer.

Q. There isn't any other conceivable side to the question 14306 in your mind, is there?

Mr. KELLOGG. Mr. Rosenthal, you should let the witness answer.

Q. What?—A. No, sir.

Q. And yet you and the clerks discussed something concerning which you made up your mind in a minute and concerning which there was no other conceivable side, for three or four hours?—A. I said that we discussed the matter and had spoken to Mr. Schindler about it for three or four hours; that is what I meant to say.

Q. Now, what was there to discuss for three or four hours if you made up your mind in a minute about it? Were these other clerks so much more stupid than you?—A. No, but they didn't all happen to be in the office at the same time. There was a man who was assistant general freight agent; I went up to his office about it for an hour or two.

Q. Why?—A. To ask his opinion about it.

Q. Why?—A. To show it to him; to let him know what was going on.

Q. Why did you want his opinion?—A. I simply wanted to let him know what question was up.

Q. Why did you want his opinion?

Mr. KELLOGG. I think the witness has stated.

Mr. ROSENTHAL. No, he has not. Please leave the witness with me—or make your objections.

Mr. KELLOGG. Wait a moment now. Mr. Rosenthal, I think you should treat this witness——

14307 Q. Why did you want his opinion, is the question.—A. I wanted him to read it and to know what was going on around there and have him state his opinion, to see if he agreed with me.

Q. Why did you want to know whether he agreed with you?—A. To see if he was of the same opinion that I was.

Q. Why?—A. Just simply to back up mine.

Q. Did you think that your opinion needed backing up——A. No.

Q. —— if there was no other conceivable side?—A. No, sir.

Q. Then, why did you go to him?—A. As I said before, he was a superior officer; and I wanted to get an expression from him.

Q. Of opinion?—A. Yes, sir.

Q. On what this tariff meant?—A. Yes, sir.

Q. In order to fortify your own opinion?—A. In order to back up mine.

Q. In order to back up your opinion?—A. Yes, sir.

Q. That is the fact about the matter, isn't it?—A. Yes, sir.

Q. Then, there was some trace of doubt in your mind about it, wasn't there?—A. No.

Q. None whatever?—A. No.

Q. Did Schindler tell you that anybody had testified differently concerning this tariff?—A. No, sir.

Q. Did you ever learn that anybody had testified differently?—A. No, sir.

Q. You never have learned it, to this time?—A. No, sir.

14308 Q. Did Schindler tell you why he wanted your opinion about it?—A. No, sir.

Q. And still you spent three or four hours among your clerks simply because Mr. Schindler asked you that question; is that right?—A. No, sir. I corrected my statement. I said that it was three or four hours after we talked with the clerks that we gave Mr. Schindler our opinion.

Q. What did you do in the meanwhile?—A. Went home to dinner.

Q. Oh, yes. And how much time did you give to it all together—to a consideration of this question?—A. I should imagine that it would take an hour or two to refer it to the different fellows that were there and talk about it.

Q. And you talked to them during that hour or two, did you?—A. Yes, sir.

Q. What did you talk about?—A. I wanted them all to know and understand about it.

Q. Why?—A. Because I considered it was an important matter.

Q. Why?—A. Because I considered that it was an important matter that any clerk in a railroad office should know, and understand.

Q. And so you started out and spent an hour or two educating the clerks in your office as to the proper interpretation of these two tariffs which had never theretofore been called to your attention,

and under which shipments had never theretofore been offered?—A. Yes, sir.

14309 Q. And they were cancelled tariffs at that time?—A. We had something——

Q. Weren't these tariffs cancelled at that time?—A. The note is not cancelled.

Q. Was not tariff I. C. C. No. A-944 cancelled at the time?—A. Yes, sir.

Q. So that it was not before you for your consideration as a practical question, was it?—A. We have the supplement or amendment to that tariff before us—the present tariff.

Q. That is not in effect now, is it?—A. We have a tariff on oil now.

Q. Is not the supplement or the amendment to I. C. C. A-944 cancelled?—A. Yes, sir.

Q. And wasn't it cancelled, on December 12, 1905?—A. Yes, sir.

Q. So it was simply a theoretical question in your office wasn't it?—A. It still remains in the guide book.

Q. What still remains in the guide book?—A. That note. We still use that guide book.

Q. When did Schindler tell you what his opinion was?—A. After he had talked with us.

Q. Well, when?—A. I don't remember the date. About two months ago.

Q. Was it on the same day that you made up your mind in a minute, that he told you what his opinion was?—A. I believe it was.

Q. And what did he say his opinion was?—A. After we

14310 expressed ourselves, he said he couldn't see how we could use this tariff in view of the note in the N. D.-G. L. guide book.

Q. And then what did he say?—A. I don't remember the balance of the conversation. I guess that was all.

Q. Whom did you next talk with about the matter?—A. I can't recall now.

Q. What is your best recollection as to whom you next talked with?—A. I don't believe I talked with anybody excepting those that I had spoken to before.

Q. How long have you been here in Chicago?—A. I came here this morning about 7 o'clock.

Q. Did any of the other clerks from your office come up with you?—A. No, sir. The chief clerk came up with me; yes.

Q. The chief clerk came up with you, and did you and he talk about this on the way up?—A. No, sir; we didn't.

Q. Did you know why you were asked to come here?—A. Not exactly; no, sir.

Q. Did you know, generally?—A. We kind of surmised that it was on this question.

Q. What made you surmise that?—A. I understood that Mr. Schindler wanted us up here.

Q. Were you subpœnaed to come here?—A. Yes, sir.
Q. By whom?—A. We were notified to come.
Q. By whom?—A. By our superior officer.
Q. Who is that?—A. Mr. Ross.
14311 Q. No subpœna was ever served upon you?—A. It was served on us here.
Q. It was served on you after you got here to Chicago?—A. Yes, sir.
Q. You were simply told to come up here?—A. Yes, sir.
Q. And you came?—A. Yes, sir.
Q. Without a subpœna?—A. Yes, sir.
Q. And whom have you talked with about this matter since coming here? Mr. Schindler?—A. No, sir.
Q. You didn't talk with him? Were you in the room with him this morning?—A. Yes, sir.
Q. He never mentioned the subject to you?—A. No, sir.
Q. Did he take your written statement there at Toledo, two months ago?—A. No, sir.
Q. So you haven't talked with anybody since coming here this morning?—A. I talked with Mr. Kellogg.
Q. Whom else?—A. Mr. Durand.
Q. Whom else?—A. I guess Mr.—that other gentleman there [indicating].
Q. Mr. Crossland?—A. Yes, sir.
Q. Did Mr. Durand ask you what your opinion was about this tariff?—A. No, sir.
Q. Did he tell you what it was?
Q. He was here when I expressed my opinion; he was with Mr. Kellogg.
14312 Q. Did Mr. Durand ask you any questions at all?—A. I don't remember of his asking me any questions.
Q. Did he express any opinion?—A. No, sir.
Q. None whatever?—A. No, sir.
Q. And nobody excepting Mr. Schindler has expressed to you an opinion as to what the tariff means?
Mr. KELLOGG. He didn't say that. He talked about it with his own clerks.
Q. Except those clerks in your office.—A. Mr. Schindler expressed himself after he got our opinion.
Q. I say, besides Mr. Schindler.—A. No, sir.
Q. No one at all?—A. No, sir.

Re-direct examination by Mr. KELLOGG:

Q. Who did you say your superior officer was?—A. On the Shore Line?
Q. Yes. You said you went into his office and asked your superior officer, in addition to the clerks, at the time Mr. Schindler was at Toledo.—A. Oh, I was speaking to Mr. Dore, the assistant general freight agent.

Q. Who?—A. Mr. R. L. Dore, assistant general freight agent of the Clover Leaf.

Q. What did Mr. Dore say about it?—A. He said that in view of the fact of the note in the N. D.-G. L. book the tariff couldn't apply to Boston rate points.

Q. And the other clerks in the office, you say, agreed with you?—A. Yes, sir.

14313 Q. Now, Boston is not the only town that appears in this tariff I. C. C. No. A-944, above this note which reads "For list of stations to which above rates apply see various fast freight line billing instructions," is it? [Showing the tariff to the witness.]—A. No, sir.

14314 WILLIAM J. SASS, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. What is your full name?—A. William J. Sass.

Q. What is your position with the railroad?—A. Chief clerk to Mr. Sheahen, the general agent.

Q. At Toledo?—A. At Toledo.

Q. Of what roads?—A. The Detroit & Toledo Shore Line and the Clover Leaf.

Q. How long have you been in that position?—A. Since the Shore Line came in there; September, 1903.

Q. The Shore Line is operated by the Grand Trunk, do you understand, and the Clover Leaf?—A. And the Clover Leaf; yes, sir.

Q. Jointly?—A. Jointly.

Q. So you are the joint officer, or whatever your position is?—A. Chief clerk; yes, sir.

Q. Of both roads?—A. Yes, sir.

Q. The connection between the Shore Line and the Clover Leaf is at Toledo?—A. Yes, sir.

Q. Prior to the time that the Shore Line came into Toledo, what was your position?—A. I was chief clerk for the Clover Leaf only.

Q. At that place?—A. Yes, sir.

Q. How long had you been?—A. About three years before that, I imagine.

14315 Q. What are your duties?—A. I have charge of the office; chief clerk of the office.

Q. What are your duties in connection with quoting rates?—A. I look up the rates on east-bound business.

Q. Does somebody else handle the west-bound?—A. We have a Clover Leaf freight man.

Q. In waybilling freight to the East, do you have charge of the waybilling?—A. No, sir; we have bill clerks that do the billing.

Q. Are they under your direction?—A. They are under my direction; yes, sir.

Q. Are you the man in the office that usually quotes the rates to shippers?—A. We have a rate man.

Q. Besides you?—A. Besides myself.

Q. When did he come?—A. I don't believe he has worked there more than about nine months now.

Q. Prior to that time who quoted the rates—you?—A. Yes, sir.

Q. Are you familiar with the Grand Trunk and the Shore Line tariff from Toledo to various eastern points—I. C. C. No. A-944?—A. I have seen it before; yes, sir.

Q. Is that one of the tariffs in your office?—A. Yes, sir.

Q. That was in existence how long? Will you look on the face of it and see?—A. Issued December 7, 1904; effective December 12, 1904.

Q. Cancelled when?—A. Cancelled December 12, 1905.

Q. Do you have in your office the National Despatch-Great
14316 Eastern Line Shippers' and Agents' Guide No. 9? [Showing book to witness.]—A. Yes, sir.

Q. Is that a book used in your office a good deal?—A. Yes, sir.

Q. It covers all sorts of commodities, does it?—A. Yes, sir. It is a basing book, rather; east-bound billing instructions.

Q. State whether during the time that tariff was in force you shipped or billed any oil, petroleum, or its products out of Toledo to any New England point other than Boston, on the Boston rate, under that tariff and those billing instructions.—A. No, sir; we did not.

Mr. ROSENTHAL. Did you to Boston?

WITNESS. No New England point whatever.

Q. Have you looked up the billings to see?—A. I looked up the billing; yes.

Q. During that time. Are you familiar with the other railway tariffs on petroleum from Toledo?—A. No; we don't handle any oil eastbound.

Q. Never handled any under that tariff at all?—A. No, sir.

Q. I mean to New England.—A. No, sir.

Q. At what station does your road take oil from Cleveland?—A. It is billed at Manhattan Junction and handled there.

Q. Who is the agent at Manhattan Junction?—A. W. L. O'Brien.

Q. How long has he been?—A. I believe since they came into Toledo, in September, 1903; about that date.

14317 Q. Have you looked over that tariff with the billing instructions to see if Boston rates would apply to any other points?—A. I figure that the Boston rate would not apply.

Q. Well, have you looked it over?—A. I have looked it over before this; yes, sir.

Q. Why would not the Boston rate apply, say, to Portland or other New England points?—A. I figure, on account of that note in the Great Eastern line book.

Q. On account of that note?—A. Yes, sir.

Q. The note that has been read here in evidence?—A. Yes, sir.

(An adjournment was here taken until the morning of Wednesday, January 20, 1909, at 10.30 o'clock.)

14318 ROOM 627, FEDERAL BUILDING, CHICAGO, ILL.,
Wednesday, January 20, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. F. L. Crawford.

WILLIAM J. SASS recalled.

Cross-examination by Mr. ROSENTHAL:

Q. What do you say your position is?—A. Chief clerk for Mr. Sheahen.

Q. What are your duties as chief clerk?—A. I have charge of the office, under the general agent.

Q. How many employees are there in the office?—A. I imagine about thirty-five. I don't know the exact number.

Q. What do you do?—A. In what way?

Q. What is your daily vocation there?—A. I take care of the correspondence; and, as to the Shore Line, I am under bond as bill of lading clerk; look after the Shore Line bills of lading that are issued.

Q. How much have you had to do with the interpretation of tariffs?—A. I have handled tariffs for the past fifteen years.

Q. How much have you had to do with their interpreta-
14319 tion?—A. I have handled a great many of those east-bound tariff books.

Q. Have you been continuously employed there in that one office?—A. Yes, sir.

Q. What other tariffs have you handled besides these east-bound billing books?—A. Grain tariffs particularly.

Q. What others?—A. I have handled oil tariffs.

Q. How many?—A. In connection with the Shore Line, or the Clover Leaf?

Q. Either.—A. Well, since they have been issued I have seen them.

Q. Have you interpreted a great many tariffs?—A. For my own use I have, yes.

Q. What do you mean by that?—A. In connection with my position.

Q. What occasion do you have for doing that?—A. As chief clerk, of course.

Q. Yes, but what occasion do you have to do that?—A. As I said before, I am under bond to the Shore Line as bill of lading clerk.

Q. What has that got to do with the interpretation of tariffs?—A. I naturally would have to handle them in order to——

Q. How often are you compelled to study tariffs over, there, in the doing of your work?—A. At the present time I probably look them over when occasion demands.

Q. Which would be how frequently?—A. Probably four or five times a week.

14320 Q. Did you ever make any tariffs?—A. No, sir.

Q. Construct any tariffs?—A. No, sir.

Q. Do you know the basis upon which they are constructed?—A. No, sir.

Q. Don't know anything about that at all?—A. No, sir.

Q. You don't pretend to be a tariff expert, do you?—A. I do not pretend to be an expert; no, sir.

Q. Suppose you are in doubt about the interpretation of a tariff, about whether or not a tariff makes a given rate; to whom do you refer the question?—A. I would take the matter up with the traffic department of the Shore Line, if it was a Shore Line matter.

Q. Who would your superior be there?—A. Mr. J. P. Main is the traffic manager.

Q. And with the other line, with whom would you take it up?—A. Take it up with Mr. R. L. Dore, assistant general freight agent, at Toledo.

Q. As a matter of fact, you take up any question of any importance with them, do you not?—A. If there is any doubt in my mind as to the correct application of any rate I would; yes, sir.

Q. And then you are governed by their construction?—A. Mostly.

Q. And by their instruction?—A. Yes, sir.

Q. You say "mostly."—A. If there is any doubt.

Q. Aren't you always?—A. If there is any doubt in my mind as to the correct application I am; yes, sir.

Q. So that you don't stand as the rate man there at all?—

14321 A. I do in connection with the Shore Line.

Q. But even there you put up any rate question to your superior, do you not?—A. If there is any doubt in my mind, I would; yes, sir.

Q. I don't suppose that happens more than once in five or ten years, does it?—A. It doesn't happen every day.

Q. How frequently does that happen?—A. It might come up two or three times a month, probably.

Q. Where you would have some doubt?—A. Some doubt; yes, sir.

Q. As to the correct interpretation of a tariff or a given number of tariffs?—A. Yes, sir.

Q. Who is your superior, do you say?—A. My immediate superior is Mr. Sheahen, the general agent.

Q. Yes; but I mean on traffic matters, rate matters.—A. In connection with the Shore Line, John P. Main, of Detroit.

Q. And who is the other man?—A. R. L. Dore, of the Clover Leaf.

Q. Do you know a man by the name of Ross, of Detroit?—A. I just met the gentleman this morning; I was introduced to him. That was the first time I ever saw him.

Q. What is his railroad position?—A. I understand that he is the tariff man at Detroit.

Q. Of what line?—A. Of the Detroit & Toledo Shore Line.

Q. That is the road that you are connected with?—A. Commonly called the Shore Line; yes, sir.

Q. You understand that he is the tariff man of that line?—A. I understand that he has charge of the tariffs there; yes, sir.

14322 Q. What do you mean by having charge of the tariffs of that line?—A. That he is the man that handles them.

Q. He is the man that constructs the tariffs?—A. I don't know what his duties are, of course.

Q. Is he your superior in the matter of tariffs?—A. Well, I would report the matter to J. P. Main, if I had any report.

Q. Just what do you understand Mr. Ross' position to be with that Detroit road of which you are a clerk in Toledo?—A. I understand that he is the tariff man of the Shore Line at Detroit. That is as far as I know.

Q. Their chief tariff man?—A. Yes. That is as far as I know what his duties are.

Q. Have you talked with him about your interpretation of these two tariffs?—A. No, sir.

Q. Don't you know that his interpretation is just the opposite?—A. I do not know; no, sir.

Q. You never asked his opinion about it?—A. I never asked him; no, sir.

Q. And you didn't talk with him in the witness room a few minutes ago?—A. I was just introduced to him, that is all.

Q. But you didn't discuss the matter?—A. Didn't discuss the subject at all.

Q. Do you know what Ross is doing here?—A. Mr. Ross?

Q. Yes.—A. I don't know what he is doing here; no, sir.

Q. Where did you see him?—A. I saw him in Mr. Kellogg's room. I was introduced to him.

14323 Q. Introduced by whom?—A. By Mr. W. L. O'Brien, the agent of the Shore Line at Manhattan.

Q. That is the room where the witnesses are kept together, is it not?—A. That is where we were; yes, sir.

Q. And where the witnesses consult with government counsel?—A. Well, yes.

Q. You don't know whether Mr. Ross is here under subpœna or not, do you?—A. I do not know; no, sir.

Q. What is Mr. Ross' first name?—A. I don't know what his first name is.

Q. Were you present when he was interviewed by counsel for the Government, or Mr. Durand, or Mr. Schindler?—A. No, sir.

Q. But he was in the witness room there with the other witnesses?—A. He was there this morning.

Q. And did he tell you he had been subpœnaed here as a witness?—A. No, sir; I was just simply introduced.

Q. Did he tell you that he had talked with anyone about that matter?—A. No.

Q. Did you see him talk with anybody about it?—A. I believe Mr. Kellogg took him in this room about it. I don't know what——

Q. You don't know that his opinion is just the opposite from yours?—A. I do not know; no, sir.

Q. Upon the interpretation of these two tariffs?—A. No, sir.

Q. Did you find out about that?—A. I didn't. I don't know now.

14324 Q. Would it influence your judgment at all if you found that your rate expert construed these tariffs differently from you?—A. It would not change my opinion of it, no, sir.

Q. When you are in doubt or when you reach an opinion concerning some tariff matter and you put it up to your superior and get a contrary opinion to yours, does that ever affect your original opinion?—A. It does, of course, if I am mistaken on the matter.

Q. Does it add anything to your mental attitude at all? Does it help to convince you that you have been mistaken—the fact that somebody else differs from you?—A. I am always ready to be convinced if there is anything there to convince me.

Q. Would it influence your judgment concerning your interpretation of these tariffs if you knew that eight or ten of the great tariff experts of the country had interpreted the tariffs differently than you had?—A. I don't think it would in this particular case.

Q. It would not affect your judgment at all?—A. No, sir.

Q. Although you never have made a tariff yourself?—A. I have never made one, no, sir.

Q. Never constructed one?—A. No, sir.

Q. And don't know anything about the basis of it. Did you ever attend a rate meeting?—A. No, sir.

Q. Besides you and Mr. Sheahen are there any other men in your office that have been brought up here?—A. That is all; Mr. Sheahen and myself.

14325 Q. Do you put up a doubtful tariff matter to Mr. Sheahen first for his orders on the matter?—A. No, sir.

Q. Why not?—A. I would speak to him about it. I would mention it to him.

Q. Is he not your superior, so far as a rate matter is concerned?—A. He is. I would speak to him and probably get his opinion on it.

Q. But would you take it? Suppose it differed from yours.—A. No, I don't think I would.

Q. Why not?—A. Of course, Mr. Sheahen is subject to the instructions of the traffic manager.

Q. Where you and Sheahen differ as to the interpretation of one of your tariffs down there, don't you pay any attention to his interpretation?—A. I believe I would take it up further.

Q. Would you back your opinion as against Sheahen's opinion on a rate matter?—A. I believe I would, yes, sir.

Q. You regard yourself as more competent in the construction of rate matters than Mr. Sheahen, because his time is taken up in other directions?—A. I believe I would, yes, sir.

Q. How much of Mr. Sheahen's time is given to rate matters down there?—A. Not very much time.

Q. What?—A. There isn't any time of his given to the rates except——

Q. What does he do, anyway, there in his office, so far as quoting rates is concerned, or making rates, or interpreting or construing tariffs?—A. He looks after correspondence——

Q. Yes, but what does he do on that particular subject-
14326 matter?—A. He doesn't do anything unless the question is brought up to him.

Q. Who might bring the question up to him?—A. I might.

Q. Why should you do that, if you regard your opinion better than his on a rate matter? Simply for the purpose of exchanging views with him?—A. As general agent I would tell him about it.

Q. Why?—A. So that he would know that I was going to take it up higher.

Q. But not for the purpose of getting instructions from him?—A. Not exactly; no, sir.

Q. You don't consider Sheahen an expert on a rate matter, do you?—A. I do not; no, sir.

Q. Did Mr. Schindler talk with you at Toledo?—A. He did; yes, sir.

Q. Did he tell you who he was?—A. Yes, sir.

Q. What did he say?—A. He asked me to get——

Q. Who did he tell you that he was?—A. I believe he saw Mr. Sheahen first; and Mr. Sheahen gave me instructions to get the tissues——

Q. Who did Schindler tell you that he was?—A. I was introduced to Mr. Schindler.

Q. Did you know who he was?—A. I didn't know who he was until that time; no, sir.

Q. Did he tell you what any of the witnesses up here had testified to about this matter?—A. Not that I remember of.

Q. Didn't he tell you that there had been a great deal of
14327 testimony on this subject-matter one way up here?—A. Not that I remember of.

Q. Don't you remember something of that kind?—A. No, sir.

Q. Nothing of that kind at all? A. No, sir.

Q. Who were you told that Mr. Schindler was?—A. I was introduced to him by Mr. Sheahen.

Q. As what?—A. As Mr. Schindler, an Interstate Commerce man.

Q. By whom?—A. By Mr. Sheahen.

Q. As connected with the Interstate Commerce Commission?—A. Yes, sir.

Q. Is tariff A-944, Grand Trunk Railway, one of your tariffs?—A. If that is the correct number of it, it is.

Q. I show you I. C. C. No. A-944. Is that a tariff of your line?—A. Yes, sir.

Q. Which line?—A. Detroit & Toledo Shore Line.
Q. Did you ever see that tariff before Mr. Schindler showed it to you?—A. I may have seen it four or five years ago.
Q. Well, did you?—A. I imagine I did.
Q. Not what you imagine. Have you any recollection of ever having seen it?—A. I remember seeing oil tariffs; yes, sir.
Q. Have you any recollection of ever having seen that tariff? That is a very simple question.—A. Yes, sir.
Q. Do you remember that you have seen it?—A. I have seen it; yes, sir.
Q. Then why did you say a moment ago that you just "imagined" that you must have seen it? Have you now any independent
14328 recollection of ever having seen that tariff before it was shown to you by Schindler?—A. Yes, sir; I would see it.
Q. Not what you *would* see. Do you remember that you saw it?—A. I do; yes, sir.
Q. When did you see it? Oh, don't look at the date. When did you see it?—A. I presume some time after 1903.
Q. Where did you see it?—A. In the local office.
Q. You are quite sure about that, are you?—A. Yes, sir.
Q. And are willing to swear that you saw that particular tariff?—A. Yes, sir.
Q. Did you ever use it?—A. No, sir.
Q. Where did you have it?—A. In the file.
Q. Do you remember seeing it in the file?—A. Yes, sir.
Q. This particular tariff, I. C. C. A-944?—A. I think I do; yes, sir.
Q. Well, did you?—A. Yes, sir.
Q. What?—A. Yes, sir.
Q. When was it that you saw it there?—A. I imagine in 1903 or 1904.
Q. In 1903 or 1904?—A. In the early part of 1904.
Q. And did you use it?—A. No, sir.
Q. Why not?—A. We had no occasion to use it.
Q. Why not?—A. Because we had no shipments.
Q. No shipments where?—A. Of oil going to any New England points.
Q. And you think you saw this tariff in 1903 or the early part of 1904?—A. I think so; yes, sir.
Q. And you are willing to swear to that?—A. Yes, sir.
14329 Q. It was only issued December 7, 1904. Will you tell us how you could have seen it in 1903 or in the early part of 1904?—A. Well, I got mixed on the dates.
Q. Is that the only thing you got mixed on?—A. Yes, sir.
Q. Didn't you get mixed on the fact as to whether you ever saw this tariff at all?—A. No, sir.

14330 FRANK C. REILLY, recalled, and his direct examination resumed, as follows:

By Mr. KELLOGG:

(Papers marked petitioner's Exhibits 1017 to 1035, inclusive.)

Q. I show you a file marked in pencil "A–520," showing a large amount of correspondence. Will you please explain whether that is a file in your office, and what it is?—A. That is a part of our record file, correspondence, tariff, authority files.

Q. Do you mean you keep your tariff files in certain letters and numbers?—A. Yes, sir.

Q. The correspondence pertaining to a tariff or series of tariffs you keep together?—A. I had a method of filing these tariffs according to certain subjects, and we tried to keep them together—that is, any letter or paper pertaining to that particular subject was attached to that particular file.

Q. And A–520 was the tariff file of what product or of what freight, if any?—A. It is evident from the papers that it covered the petroleum products.

Q. And the file I show you is one of the regular files in your office, is it?—A. Yes, sir.

Q. Did you find it in the condition in which you now have it—bound together?—A. Yes, sir; in its present shape and condition.

Q. You were asked to search for this yesterday, by the Government, were you not?—A. Yes, sir.

Q. And you produced it in pursuance of that request?—
14331 A. Yes, sir.

Q. I show you petitioner's Exhibit 1017. What does that purport to be?—A. That is evidently a carbon copy of a letter out of the general freight office.

Mr. MILLER. Do you know, Mr. Reilly? Did you ever see it before?

WITNESS. Yes, sir; I have seen it before.

Mr. KELLOGG. Why, anybody looking at it can see that it is a carbon copy, Mr. Miller.

Mr. MILLER. You used the word "evidently." I wanted to object to your using it. Just speak from your knowledge.

WITNESS. I would say, then, that it is a carbon copy.

Q. Has it been your practice in that office to make carbon copies of letters for files, like that?—A. Yes, sir; we make carbon copies for files.

Q. That letter, petitioner's Exhibit 1017, is one of the files you have been testifying to?—A. It is a part of this file here.

Q. A part of file A–520?—A. Yes, sir.

Q. It is dated February 5, 1898, and addressed to Mr. F. P. Jeffries, G. F. A., E. & T. H. R. R., Evansville, Ind. Who is Mr. Jeffries? Who was he at that time?—A. Mr. Jeffries at that time was general freight agent of the Evansville & Terre Haute Railroad Company.

Q. What is the next letter to this in the file? State whether it is a carbon copy addressed to the same party and dated February 3rd?—A. Yes, sir.

Q. Petitioner's Exhibit 1018?—A. A carbon copy of a

14332 letter.

Q. Next in order in the file, is it?—A. Yes, sir.

Q. I show you petitioner's Exhibit 1019, which appears next to petitioner's Exhibit 1018 in the file. In whose handwriting is that?—A. I would say Mr. William Campbell's.

Q. He was at that time general freight agent of the C. & E. I., was he?—A. Yes, sir.

Q. Petitioner's Exhibit 1020, appearing next in the file, is in whose handwriting?—A. Signed "S. J. C." I would say Mr. Cooke's handwriting.

Q. S. J. Cooke. The next paper, petitioner's Exhibit 1021, appearing next in the file, is a cancellation notice, is it not?—A. Yes, sir.

Q. From what tariff?—A. G. F. D. Tariff 10084.

Mr. MILLER. Do not all these papers show for themselves, Mr. Kellogg?

Mr. KELLOGG. Yes. I am simply identifying them, Mr. Miller; that is all.

Mr. MILLER. Well, they are all old papers, ten years old, are they not, apparently, from their dates?

Mr. KELLOGG. Yes, sir.

Mr. MILLER. Mr. Reilly wasn't there on the road at that time, was he? He hasn't any knowledge of them, except what he sees there. Anybody could tell as much as he could.

Mr. KELLOGG. Mr. Reilly has charge of these files now, Mr. Miller, and he testifies to what he finds in the files.

Mr. MILLER. Well, in these papers; but he does not know any more than any stranger as to what the papers are that are

14333 ten years old, from his knowledge.

Mr. KELLOGG. He is simply identifying this paper. You may ask Mr. Reilly any question you please when we get through.

Mr. MILLER. Well, I object under the present state of his knowledge. How long have you been with the road, Mr. Reilly?

WITNESS. What road?

Mr. MILLER. The Eastern Illinois.

WITNESS. The Eastern Illinois proper, or some of the other roads?

Mr. MILLER. Well, the Eastern Illinois proper. That is what you are with now, is it not?

WITNESS. Five years.

Mr. MILLER. Before that where were you?

WITNESS. With the St. Louis & San Francisco.

Mr. MILLER. How long have you been the general freight agent of the C. & E. I.?

WITNESS. Three years. Since August 1st.

Mr. MILLER. I object, on the state of his knowledge, to Mr. Reilly stating what these papers are, beyond the fact (if it be a fact) that

they are produced from the files of his own road—if he knows that to be a fact.

Q. I show you petitioner's Exhibit 1022, being the next in order in this file which you produced, is it not?—A. Yes, sir.

Q. It purports to be a letter addressed to William Campbell, G. F. A., C. & E. I. Railroad, Chicago, Illinois, and signed "F. P. Jeffries, g," and "F. F. A." after it. Did you know Mr.
14334 Jeffries?—A. I know Mr. Jeffries.

Q. How long have you known Mr. Jeffries?—A. 16 or 18 years.

Q. Was he at that time the general freight agent of the Evansville & Terre Haute road?—A. I don't know at that particular date, but I imagine he was, from the——

Q. You know him to be connected with that road?—A. Yes, sir.

Q. Do you know that signature?—A. I have seen the signature somewhere.

Q. Who wrote it? I mean the one you have seen, you say.

Mr. ROSENTHAL. I object to that. Whose signature does it purport to be?

Mr. KELLOGG. Mr. Jeffries'. Signed "Jeffries."

Mr. ROSENTHAL. Did you ever see Jeffries sign his name?

WITNESS. Yes, sir.

Mr. ROSENTHAL. Frequently?

WITNESS. Well, I don't know what you call frequently, but I have seen him sign his name.

Mr. ROSENTHAL. Have you seen him enough to be able to identify his handwriting?

WITNESS. Yes, sir.

Q. Is this Mr. Jeffries' handwriting, or is it not?—A. That is not Mr. Jeffries' handwriting.

Q. Do you know whose it is? Or what is your opinion as to it?

Mr. ROSENTHAL. I object to his opinion. The question is
14335 if he knows.

Mr. KELLOGG. I will find out how much he knows about it.

Q. Do you know a man by the name of H. R. Griswold?—A. Yes, sir.

Q. Who is he now? What position does he hold now? Do you know?—A. He is division freight agent of the Vandalia Railroad at St. Louis.

Q. Do you know whether he was ever connected with the Evansville & Terre Haute?—A. Yes, sir.

Q. In what position?—A. He was assistant general freight agent.

Q. Did you ever see him sign his name, or sign Mr. Jeffries' name?—A. I have seen him write his name, but I cannot say that I have ever seen him sign Mr. Jeffries' name.

Q. You have seen him sign his own name?—A. Yes, sir.

Q. Do you know him well?—A. Yes, sir.

Q. How long have you known him?—A. 15 or 16 years.

Q. Who do you think signed that name?

Mr. MILLER. We object to that.

Q. You may answer, Mr. Reilly.—A. I would say Mr. Griswold.

Q. You are familiar with Mr. Griswold's handwriting, are you?—A. Yes, sir. I would say I have seen it a number of times.

Q. Did you find petitioner's Exhibit 1023 in this same file?—A. Yes, sir; it was attached to the same file.

Q. State whether there are any letters between petitioner's Exhibits 1022 and 1023 in the file.—A. There is a carbon copy and a letter—two documents.

Q. To identify it, petitioner's Exhibit 1023 purports to be
14336 a carbon copy of a letter, or telegram?—A. Western Union telegram.

Q. How do you know that? How do you judge it is a Western Union telegram?—A. Well, I would take the designated mark, "Deadhead No. 233."

Q. That purports on its face to be signed by William Campbell and to be addressed to Hon. J. M. Smith, Auditor, Interstate Commerce Commission?—A. Yes, sir.

Q. That is simply for identification. Do you know whether that is the form in which the copies of telegrams are kept in that office in these files?—A. That is about the form we follow to-day.

Q. And do the files show the same form used at that time, in 1898?—A. Yes, sir; I should judge so. It would speak for itself.

Q. Petitioner's Exhibit 1024. State whether that is the next document found in this file.—A. Yes, sir; the next document.

Q. Just for the purpose of identifying it—it is signed "Wm. C." and addressed to "H. H. R.," is it not?—A. Yes, sir.

Q. And bears the following figures at the bottom: "1/21/98?"—A. Yes, sir.

Q. Do you know a person with those initials, "H. R. R.," in the employ of the C. & E. I. road at that time?—A. I would imagine it referred to H. H. Rhodes.

Q. What do you know about Mr. H. H. Rhodes?

14377 Mr. MILLER. I object to that, if Mr. Reilly does not know. It is only because his knowledge that he is asked for.

Q. Who is Mr. H. H. Rhodes, Mr. Reilly?—A. Who he is to-day, or who he was?

Q. Yes; who he is now. What is his business?—A. He is connected with the Dering Coal Company.

Q. Did he used to be connected with the C. & E. I. road, do you know?—A. Yes, sir.

Q. Has Mr. Rhodes been with the road since you have been connected with it, Mr. Reilly?—A. Yes, sir.

Q. In what position?—A. He was coal traffic manager.

Q. What is the next paper to petitioner's Exhibit 1024 in the file?—A. It appears to be a copy of G. F. D. No. 10084—a tariff.

Q. Issued by the Chicago & Eastern Illinois Railroad?—A. Yes, sir.

Q. From Toledo to Grand Junction, Tennessee, on petroleum and its products, is it?—A. Yes, sir.

Mr. KELLOGG. That is the one offered in evidence by you, Mr. Rosenthal.

Q. What is the next paper in the file?—A. It is a copy of a division sheet.

Q. To what tariff?—A. To the preceding tariff; that is, the tariff you mentioned.

Q. G. F. D. No. 10084?—A. 10084.

Q. I show you petitioner's Exhibit 1025. Is that the next paper in this file?—A. Yes, sir.

Q. The marks at the bottom, "H. H. R.: Please note the meat in the cocoanut. Wm. C.," in whose handwriting is that?—
14338 A. Mr. William Campbell's.

Q. Do you know in whose handwriting the rest of the document is?—A. No, sir.

Q. Petitioner's Exhibit 1026 is the next document in the list, isn't it?—A. Yes, sir.

Q. And it purports on its face to be a Postal telegram, signed "W. D. Hurlbut" and addressed to "William Campbell?"—A. Yes, sir.

Q. The next document in the list is Exhibit 1027, is it not?—A. Yes, sir.

Q. State what that is.—A. It is a carbon copy of a letter addressed to Mr. E. P. Broughton, general superintendent, building.

Q. Did you know Mr. Broughton at that time?—A. No, sir.

Q. Do you know him now?—A. No, sir. Mr. Broughton is not alive at present.

Q. He is not alive?—A. No, sir.

Q. Did you ever know Mr. Broughton?—A. No, sir.

Q. Do you know whether there was a man by the name of Broughton on the C. & E. I. road at that time?—A. As I recall, he was general superintendent.

Q. You do recall?—A. Yes, sir.

Q. You did not know him personally?—A. No, sir.

Q. I show you petitioner's Exhibit 1028. State whether that is the next document in the list.—A. Yes, sir.

Q. That purports to be what?—A. A carbon copy of a letter to Mr.
F. P. Jeffries, general freight agent E. & T. H., Evans-
14339 ville, Indiana.

Q. Dated what date?—A. January 21, 1898.

Q. I show you petitioner's Exhibit 1029. Is that the next document in the list?—A. Yes, sir.

Q. What does that purport to be?—A. A carbon copy of a Western Union message.

Q. Signed by whom?—A. William Campbell.

Q. That is, it is in typewriting?—A. Yes, sir.

Q. I just wanted to identify it. And how addressed?—A. "W. D. Hurlbut, General Freight Agent, Illinois Central Railroad, Louisville."

Q. Petitioner's Exhibit 1028. What does that purport to be, and is it the next document in the list?—A. Yes, sir. A Postal Telegraph message from W. D. Hurlbut.

Q. Addressed to whom?—A. William Campbell.

Q. In this same file I show you petitioner's Exhibit 1031. Is that a part of the same file A–520?—A. Yes, sir.

Q. And separated by a number of documents, is it not?—A. Yes, sir.

Q. Preceding this and between the ones you have been testifying to and this document?—A. Yes, sir.

Q. What does petitioner's Exhibit 1031 purport to be?—A. A carbon copy of a letter addressed to L. L. Hyde, assistant general freight agent, Cincinnati.

Q. Who was Mr. Hyde, do you know?—A. Assistant general freight agent of the Big Four Railroad.

Q. Does the Big Four road connect with the C. & E. I., or
14340 did it at any time, and form a part of a route to St. Louis?—A. Well, it has always been a connection of the C. & E. I. road and open to traffic between Chicago and East St. Louis and St. Louis.

Q. Does the C. & E. I. now run into East St. Louis?—A. Yes, sir.

Q. On its own tracks?—A. Why, we have some arrangements for getting into St. Louis.

Q. How long has it had a road in there, do you know?—A. Three or four years.

Q. What was the junction between the Big Four and the C. & E. I.?—A. On the St. Louis business?

Q. Yes.—A. When?

Q. Prior to the time the C. & E. I. had its own tracks?

Mr. MILLER. Does he know? Was that prior to the time Mr. Reilly was with the road?

Mr. KELLOGG. I will ask him if he knows.

Mr. MILLER. Well, if he knows.

A. We have that junction now at Shelbyville.

Q. What is the next document, petitioner's Exhibit 1032?—A. It is a carbon copy of a letter addressed to H. A. Rubidge, auditor, building, dated July 23, 1897.

Q. Do you know who Rubidge was?—A. Only through hearsay.

Q. Is this letter, or copy of a letter, next to Exhibit 1031, or is there something intervening?—A. It is separated by one sheet of carbon paper—a letter.

Q. What is petitioner's Exhibit 1033?—A. A carbon copy
14341 of a letter addressed to H. A. Rubidge, auditor, dated July 26, 1897.

Q. Separated from the preceding petitioner's Exhibit 1032 by two other documents?—A. Yes, sir.

Q. Two sheets?—A. Two sheets.

Q. What is petitioner's Exhibit 1034?—A. A carbon copy of a letter addressed to A. M. Richards, commercial agent, Chicago Heights, dated July 26, 1897.

Q. Do you know who Mr. Richards was at that time?—A. No, sir.

Q. Do you know who Mr. C. W. Hillard was?—A. I know Mr. Hillard was treasurer of the C. & E. I. road at that time.

Q. This petitioner's Exhibit 1034 appears in this file next to petitioner's Exhibit 1033, does it?—A. Yes, sir.

Q. What is petitioner's Exhibit 1035?—A. A letter addressed to H. H. Rhodes, from Mr. H. A. Rubidge.

Q. Dated?—A. July 24, 1897.

Q. In the file does it appear next to petitioner's Exhibit 1034?—A. Yes, sir.

Q. Do you know whether at that time, in addition to keeping carbon copies, that railroad kept press copy books?

Mr. MILLER. You mean at that time in 1897 or 1898?

Mr. KELLOGG. Yes.

A. Why, our records would indicate that we kept press letter books—copies of all letters.

Q. You have seen such press letter books?—A. Yes, sir.

Q. Of letters in files like these?—A. Why, I should imagine so. There were duplicate copies made.

14342 Q. What is the course of business now? Do you do the same?—A. No, sir.

Q. You do not?—A. No; we do not copy them in letter-books.

Q. Have you preserved the old letter-books of 1897 or 1898, do you know, Mr. Reilly?—A. No, sir. We destroyed all our records—that is, our letter records—prior to January 1, 1900.

Q. So you would not have the letter press copies of these letters, Mr. Reilly?—A. No, sir.

Mr. KELLOGG. I offer in evidence petitioner's Exhibits 1011, 1012, 1013, 1014, 1015, and 1017 to 1035, inclusive.

Mr. ROSENTHAL. Does that include this whole file?

Mr. KELLOGG. That includes only those that I had marked exhibits, Mr. Rosenthal.

Mr. ROSENTHAL. I object to petitioner's Exhibit 1035 upon the ground that it is res inter alios; and I make the same objection to petitioner's Exhibits 1034, 1033, 1032, 1031, 1030, 1029, 1028, 1027, 1026, 1025, 1024, 1023, 1022, 1021, 1020, 1019, 1018, and 1017.

Mr. KELLOGG. That is all.

Mr. ROSENTHAL. Now, we should like to have an opportunity of examining the files whole before——

Mr. KELLOGG. There is no objection to your examining it. It is in Mr. Reilly's possession. We have never had the possession of it, and I do not suppose Mr. Reilly wants it to go out of his possession. We do not care.

Mr. ROSENTHAL. Well, the file is here in court.

Mr. KELLOGG. Oh, certainly; there is no objection.

14343 Mr. ROSENTHAL. You examined Mr. Reilly concerning the file?

Mr. KELLOGG. Certainly.

Mr. ROSENTHAL. You asked him concerning the file?

Mr. KELLOGG. Certainly.

Mr. ROSENTHAL. You marked certain letters of a file?

Mr. KELLOGG. I thought you meant taking it out of court.

Mr. ROSENTHAL. Now, we reserve the right to examine, either here or another place, the file as a whole before we cross-examine him.

Mr. KELLOGG. No objection to that at all.

Mr. ROSENTHAL. I also object to each and all of those exhibits, and any testimony concerning them, upon the ground that the evidence is not rebuttal evidence, and it opens up a new subject-matter. (Addressing the witness.) Have you any objection to our taking these during the noon hour?

Mr. KELLOGG. We haven't any objection. They belong to you, Mr. Reilly, and we have no right to let them go out of your possession. So far as we are concerned——

WITNESS. Well, I have no objection, Mr. Kellogg; none whatever.

(A recess was here taken until 2 o'clock p. m.)

14344 AFTERNOON SESSION.

FRANK C. REILLY recalled, and his direct-examination resumed, as follows:

By Mr. KELLOGG:

Mr. ROSENTHAL. Whatever objection defendants' counsel may make to the receipt of any of the files offered by Mr. Reilly, such objection is not based upon the ground that the files or any portion of the files are mere copies.

Mr. Reilly, I show you a memorandum cantained on page 1541, Volume 4 of the record in this case, which was a copy of a memorandum produced by Mr. Durand and testified to by him. It is at the bottom of the page. I wish you would look at it and state whether you have made a search in the files for the original memorandum. [Showing the memorandum to the witness.] Have you looked at the memorandum?—A. Yes, sir; I have looked at this memorandum.

Q. It appears by Mr. Durand's testimony, or at least he testified, that he found that memorandum in file 1818 of the C. & E. I. freight office. Have you looked for that file and for that memorandum?—A. Yes, sir; I have made a diligent search, a careful search of our records, and we are unable to find the file T-1818 or the memorandum.

Q. You testified, yesterday, to petitioner's Exhibits 1011 to 1015. Will you state what file in your office they came from?—A. They came from our petroleum file, carried as office No. T-6899.

Q. Have you been requested to make a search for a certain memorandum reading as follows:

14345 "T-6899.

"H. H. R.

"I have just seen Mr. Markham, of the Illinois Central, in company with Mr. McClintock, and through billing arrangements from Dolton to Grand Junction can be arranged on the oil, taking effect to-morrow, March 1st. The E. & T. H. has wired that the arrangement is satisfactory to it, and Mr. Markham says it will be entirely satisfactory to the Ill. Central. He has the matter up with Mr. Hurlbut and Mr. Fairman. Will you therefore please make arrangements for proper instructions to the agent at Dolton at once?

"Wm. C. 2/28/98."

Q. Have you made a search for that memorandum?—A. Yes, sir; I have made a careful search, caused careful search to be made, for this memorandum and file, and have been unable to find it.

Q. It was not attached to the file that you produce—T-6899?—A. No, sir. That is the entire file.

Q. I show you a letter-book. What is this letter-book?—A. Part of the office records of the Chicago & Eastern Illinois.

Q. That is an original impression letter-book, is it?—A. That is a tissue impression of the original letter.

Q. Of the Chicago & Eastern Illinois office?—A. Yes, sir.

Q. A regular file in your office?—A. Yes, sir.

Q. I show you a letter dated August 16, 1904, addressed to D. H. Hillman, G. F. A., E. & T. H. R. R., Evansville, Indiana, signed "S. J. Cooke, G. F. A.," with a large "R" under it. Do you

14346 know whose handwriting that signature is—S. J. Cooke?—A. Yes, sir.

Q. Whose?—A. That is signed by Mr. I. L. Runyon.

Q. Who was Mr. Runyon?—A. Former chief clerk for Mr. Cooke.

Q. Was he in 1904, at that time, the chief clerk for Mr. Cooke?—A. Yes, sir.

Q. And you know his handwriting, do you?—A. Yes, sir.

Q. And who was D. H. Hillman, G. F. A., E. & T. H. R. R.?—A. General freight agent of the Evansville & Terre Haute road.

Mr. KELLOGG. I offer that letter in evidence.

Mr. ROSENTHAL. I object to it as res inter alios and not rebuttal.

Mr. KELLOGG. You are perfectly willing that the stenographer may copy this letter instead of putting in the original?

Mr. ROSENTHAL. Oh, certainly.

Mr. KELLOGG. And he can give the book back to Mr. Reilly.

14347 Q. Mr. Reilly, I neglected to ask you about a letter referred to in this letter of July 24, 1897, from Mr. Rubidge to Mr. Rhodes, in which it is said, "I would refer you to your letter dated October 24, 1894, to the agent at Dolton, and also to your letter to me dated October 24." Have you made a search for those original letters of 1894?—A. Yes, sir. We have made a search of our records, but are unable to find them.

Q. I show you page 1433, volume 9 of the record in this case, Exhibit 540, which purports to be a letter dated February 28, 1898, a part of file T-6899, signed (blank) G. F. A., to Mr. J. B. Reid, agent, Dolton, Illinois. Have you been able to find the original of that in that file?—A. We made a search for this letter, but are unable to find it.

Q. Do you know whether he was the agent of the C. & E. I. at Dolton, Illinois, in 1898?—A. No, sir; I could not say definitely whether he was agent at that time.

Q. Do you know whether he ever was at any time?—A. No, sir; I do not.

Q. Mr. Reilly, what do you mean by "blind-billing" as used in this case?—A. Well, that is, in this particular case?

Q. No. Any railroad. What would you call a blind bill?—A. It is rather an obsolete method of billing that we do not use to-day. It was used at one time more as a slip bill to move a car forward without showing the revenue bill.

Q. Without showing the rate?—A. The rate, or revenue; yes, sir.

Q. I am speaking about a waybill showing the origin and
14348 destination. Is a blind-bill one that does no show the rate?—A. Well, I would say a blind-bill would not show any revenue at all—rate or revenue.

Q. And what is it used for by railroads?—A. It might be used for various reasons.

Q. What was it used for, so far as you know? To conceal the rate, or not?

Mr. ROSENTHAL. Do you know anything about the blind-billing in this particular case, of you own knowledge, Mr. Reilly?

WITNESS. Not in this particular case.

Q. What was it used for when it was practiced, if at all?

Mr. ROSENTHAL. Used for where and when?

Q. Do you know? Not in this case, but what was it used for when it was used?—A. It was used for a form of moving freight from one point to another, without the full rate or full revenue being shown on the bill.

Q. Was it done to conceal the rate, or not?—A. It might be to conceal the rate, or to conceal the revenue, or for some particular purpose. Some individual officer might order a blind-bill for some purpose.

Q. What would be the purpose? Could it serve any purpose except to conceal the rate?—A. He might want to re-bill a car to a certain destination, or cover up the consignee, or cover up the rate or revenue, or something of that kind.

Q. Ordinarily, in railroad practice, the waybill shows the rate, does it not?—A. It does to-day, yes, sir.

Q. Did it not always, ordinarily, as the usual practice?—
14349 A. Well, ordinarily, yes, sir.

Q. Did you ever know it being used? Did you ever know a blind-bill being used, not showing the rate, except for the purpose of concealing the rate—except slip bills? I am not talking about those.—A. I have known blind-bills to be used, but I did not know they were used for the purpose of concealing the rate at the time. I have seen them in the past.

Q. They are not used now, are they?—A. No, sir.

Cross-examination by Mr. ROSENTHAL:

Q. You have seen many blind-bills on commodities other than oil, have you not?—A. Yes, sir.

Q. And up to within some few years ago it was quite a common practice, in connection with commodities generally, to blind-bill, for one reason or another?—A. I would not call it a common practice; but it was not——

Q. Not an unusual practice?—A. Not an unusual practice, no.

Q. I suppose, too, in the old days, where a good many roads were members of an association and were obligated, as among themselves, in any way to maintain a rate, and where a given road cut under that rate and made a lower rate, it frequently happened that blind-billing was used to conceal the rate from the secretary of the association?—A. Yes; the secretary or any one else.

Q. Or any other road connected with the association?—A. Yes.

14350 Q. Mr. Reilly, what is the rate or the revenue put in a bill for when it is found there? What purpose does it serve in the conduct of railroad business to name the rate in the bill and to name the revenue in connection with that freight shipment?—A. It denotes the amount of money the consignee owes.

Q. So that that amount of money may be collected from the consignee?—A. Yes, sir.

Q. By the agent at the point of final destination? That is right, is it not?—A. Either at destination or any designated point that the consignee might have been in the habit of paying his bills.

Q. Naming the rate or the amount of the freight in a bill does not serve any other purpose, so far as the conduct of the railroad's business is concerned, as between the railroad and the consignee, does it?—A. No; only it designates the total amount of freight charges.

Q. Suppose, Mr. Reilly, that the freight is prepaid by the consignor. Is there any purpose served by showing the consignee either the rate or the revenue—any necessary purpose?—A. No; other than it is customary by reason of the receiving agent being responsible for his incoming charges.

Q. Yes. But if it is paid through the auditor's office, so that the receiving agent has no such responsibility towards his road, there is no purpose whatever served, under such circumstances, in naming the rate or the amount of revenue, is there?—A. No, sir.

Q. Certainly not. One object in naming it in the waybill is
14351 ordinarily because that is reported back to the auditor and

enables him to make his check as against the agent's. That is usual, isn't it?—A. That is the usual check.

Q. Where the auditor has that information beforehand, sends the bill to the consignor and himself collects the freight, no railroad purpose would be served by naming either the rate or the revenue in the bill, would there?—A. It would be pretty hard to draw a distinction there. One station or the other might be credited with certain freight charges, and the auditor might allot that credit in his settlement with the consignee; or the agent might do it himself if he has the information before him.

Q. Yes. But if the auditor has all of the necessary information, why, that is all that is necessary, is it not?—A. Yes, sir. He can perform that service himself.

Q. He can do all of those things without any reports coming back from the agents?—A. Yes, sir; that is correct.

Q. On the letters in this file containing Government exhibits from 1017 to 1035, I find a great many lead-pencil notations initialed by different officers or employes of your railroad company. Was it quite a common practice in the office to do that in connection with letters relating to freight matters?—A. Yes, sir. I find that among our old records as having been an office practice of communicating between the various officers and employes of the road at that time.

Q. That is, you find it was an office practice at that time, not only with petroleum freight, but with freights generally, for the
14352 officers or employes, in communicating with each other, to do it by way of these lead-pencil notes or memoranda, such as we find in this file?—A. Yes, sir.

Q. So that is not an unusual situation that you find in this file at all, in that regard?—A. No.

Redirect examination by Mr. KELLOGG:

Q. The practice of making or keeping memoranda or records of transactions in tariff files like that is common in the railroad business, is it not?—A. It was around our office at that time—that is, the C. & E. I. office.

Q. Take a waybill; the customary practice, as I understand, whether the freight is prepaid or collected of the consignee at the end of the transportation, is to state the rate of freight and the revenue in the waybill; is not that true?

Mr. ROSENTHAL. Oh, he has testified to that both on direct and cross—that that is the common practice, and that the other is not unusual.

A. Yes, sir; that is the common practice.

Q. Is there any reason why that can not be collected through the auditor's office just as well when the rate of freight is stated in the waybill as when it is not?—A. None that I can see.

Q. Do you know of any case on the C. & E. I. road where anything was blind-billed, except oil?—A. I can hardly testify to that, Mr. Kellogg.

Q. Do you know of any?

14353 Mr. ROSENTHAL. Wait a minute.

A. At the present time?

Q. I say do you know of any? Have you come across any such thing?—A. No, sir; I——

Mr. ROSENTHAL. Have you looked for any, except these particular cases that the Government asked you to look for?

WITNESS. In fact I have not looked at these; so that I have not found any.

Mr. ROSENTHAL. So that you have not found any even as to oil?

WITNESS. Yes, sir.

Mr. ROSENTHAL. You don't know anything about that subject-matter, then?

WITNESS. No, sir.

Q. Do you know of any purpose that blind-billing—that is, way-billing without the rate of freight—can serve, except to conceal the rate from somebody?—A. Well, I guess that covers the situation. That is, the rate might be concealed either from an association employee or a competitor, or some one.

Q. And so far as you know personally, in your experience, is that what it was done for?—A. Yes, sir.

Recross-examination by Mr. ROSENTHAL:

Q. It might serve the purpose of bookkeeping convenience, might it not, where proper payments were made through the auditor's office in connection with the steady movements of large volumes of traffic?—A. Well, it of course——

14354 Q. It diminishes the clerical work of the agent, does it not?—A. I would hardly be competent to say whether it diminishes the clerical work. The work would have to be performed somewhere, either by the auditor or the agent.

Q. Well, I say "of the agent." It diminishes the clerical work of the agent and throws it into the auditor's office, where it could be done en bloc, instead of each particular case as it comes along; would not that be true?—A. It would diminish the receiving agent's work by reason of his not expensing anything. He, in the time of common practice, knowing that these shipments were prepaid, would deliver them without any further work.

Q. Otherwise, the agent at destination would have to m[illegible] separate expense bill in connection with each consignment?—[illegible]

Q. And that is obviated where it is blind-billed?—A. Yes, sir.

By Mr. KELLOGG:

Q. Somebody has got to find out what the rate is, has he not? If the work is not done by the agent, it has got to be done somewhere else, has it not, Mr. Reilly?—A. It looks like somebody would have to work.

14355 T. C. M. SCHINDLER, recalled on behalf of the petitioner in rebuttal, testified as follows:

Direct examination by Mr. KELLOGG:

Q. I believe you have been sworn in this case, Mr. Schindler?—A. Yes, sir.

Q. I show you Grand Trunk Railway and the Toledo Shore Line tariff No. A–944, together with the National Despatch-Great Eastern Line. You are familiar with those documents, are you not?—A. I am.

Q. Have you looked them over a good many times?—A. Yes, a great number of times.

Q. In your opinion does that Grand Trunk tariff, in connection with the Great Eastern billing instructions, make the Boston rates to any other New England towns on petroleum and its products?—A. Than Boston?

Q. Than Boston, yes. "Any other," I say.—A. In my judgment it does not.

Q. Please state why.—A. Well, the tariff has been presented in connection with the National Despatch-Great Eastern Line Shippers' and Agents' Guide, and in that guide I find a clause which prohibits the application of this guide as to petroleum and its products.

Q. Is it the clause which has been read in evidence several times?—A. Yes, sir. The third paragraph, page 1.

Q. What, in your opinion, is this reference to the National Despatch-Great Eastern Line on the face of the tariff: "Grand
14356 Trunk Railway System (Lines west of Detroit and St. Clair Rivers) and Detroit & Toledo Shore Line Railroad in connection with"—then follows a large number of roads, and then it says: "and connections, as specified in the following Agents' Guides and Billing Lists:"—A. It is an additional list of railroads, as specified in the guide book.

Q. It refers to them for their connections?—A. Yes, sir.

Q. For the connections of the Toledo Shore Line?—A. Instead of specifying all of the railroads.

Q. On page 2 of this tariff we find a list of stations, one of which (Boston) is in New England, and the rest, I believe, are New York, Pennsylvania, New Jersey, or Canadian points. Then follows: "For list of stations to which above rates apply see various fast freight line billing instructions." What, in your opinion, does that mean? [Handing tariff to the witness.]—A. My understanding of that is that it has reference to any guide book that might provide for the application of rates to the other points—for instance, those in New York; that it has no reference whatever to the National Despatch, so far as the New England points, outside of Boston, are concerned.

Q. Because of any restriction?—A. Because of the restrictions in that guide book.

Q. And the two must be taken together?—A. The two must be taken together.

Q. You call this a special tariff to the towns named, do you?—A. I would call that a specific tariff.

Q. I show you the Lake Shore & Michigan Southern Rail-
14357 way tariff I. C. C. No. A-1353, effective November 2, 1903, and indicated as being canceled January 1, 1907. Do you know whether that tariff was in force on petroleum and its products between those dates? Have you examined to see?—A. Yes, sir. I am familiar with that tariff; and it so indicates.

Q. Where did it apply from?—A. It applied from Cleveland, Ohio; East Toledo, Ohio; Franklin, Pennsylvania; Oil City, Pennsylvania; Raymilton, Pennsylvania; Reno, Pennsylvania, and Toledo, Ohio; "to eastern points shown herein."

Q. And there are a large number of points shown therein?—A. It covers a great number of points, yes, sir.

Q. This is the tariff you cited for a number of exhibits which were put in the Government's case?—A. Yes, sir. Where through rates were published, those are the rates that were used.

Q. I notice on the face of this tariff that it refers to the Red Line. What is the Red Line?—A. The Red Line is a fast freight line operating over the Lake Shore Railroad and its connections between the east and the west.

Q. Would it apply on shipments generally, from Toledo?—A. On merchandise and commodities generally, yes, sir.

Q. And from Cleveland also?—A. And from Cleveland.

Q. And from what other places at which refineries are located? Do you know?—A. I don't know that I am familiar with all the points where refineries are located.

Q. Well, Toledo and Cleveland?—A. Toledo and Cleveland. It would apply from the points named in that tariff there.

14358 Q. That you just specified?—A. Yes, sir.

Q. Are there any restrictions in that Red Line billing instructions as to petroleum shipped from these points to New England points—Boston & Maine, New Haven & Hartford, and Rutland Railroad?—A. Yes, sir.

Q. If there are such restrictions, will you please read them and state where they are to be found?—A. There are such restrictions. I read these in once before.

Q. You did?—A. Yes, sir.

Q. I don't think so.

Mr. ROSENTHAL. Yes, those are all in.

A. I read those in on my former testimony.

Q. All right, if you did. I show you again this tariff, I. C. C. No. A-1353, of the Lake Shore Railroad and its connections. Does that makes the Boston rate on petroleum from Toledo or Cleveland apply to, say, Portland, Maine? And if not, why not?—A. It does not apply the Boston rate to Portland, Maine, but provides for the addition of 10 cents per 100 pounds to the rate shown to Boston.

Q. How do you find that?—A. I find, first, that Portland is shown as a Boston & Maine point, on page 21, and again on page 22; num-

bered on page 21, index 419; and on page 22, index 507. It shows, opposite Portland, the notation "33." By turning to page 6, where reference is given to the notes, it says, regarding note 33, "To make through rate add 10 cents per 100 pounds to rate shown to Boston. Waybill to Boston, using per cents applicable to that point, and show
10 cents per 100 pounds as an arbitrary for the B. & M.
14359 R. R." (Boston & Maine Railroad.)

Q. Are there any other notes there of that same kind relating to other New England points?—A. Yes, sir, there are; a number of them.

Q. Generally speaking, does that tariff in making rates to New England towns on the Boston & Maine Railroad, the Maine Central, the Rutland Railroad, and the New Haven Railroad apply the Boston rate, or provide for arbitraries over the Boston rate in addition thereto?—A. The tariff as originally published does not include stations on the New York, New Haven & Hartford Railroad.

Q. Then leave out the New York, New Haven & Hartford. Well, go on and make your explanation?—A. But to points on the Rutland Railroad indicated in the tariff the Boston rate is not made to apply.

Q. How about the Boston & Maine?—A. There are some points (and those, I believe, are the points known as points on the Fitchburg division) to which the Boston rate does apply.

Q. Those you have heretofore explained and made a map of, have you not?—A. Yes, sir.

Q. But with that exception, does the Boston rate apply to the New England towns on the Boston & Maine road, the Maine Central road, and the Rutland road?—A. It does not.

Q. How are those rates made? Are they arbitraries or amounts
charged over and above the Boston rate?—A. To some of the
14360 points the rates are made by adding a certain amount to the
Boston rate. Points on the Rutland Railroad which are indicated in this tariff on page 75 are shown as taking the Rutland rate. By reference to the rate basis on page 3, I find the Rutland rate from Toledo to be 44 cents; from Cleveland, 40½; and from Oil City, 38. Oil City was subsequently reduced to 33 cents.

Q. And the Boston rate was how much?—A. The Boston rate from Toledo was 27 cents; from Cleveland, 24 cents; and from Oil City 23½ cents per 100 pounds.

Q. So that either by arbitraries over the Boston rate or by a direct rate exceeding the Boston rate, that tariff on the Lake Shore road during that time made the rates on oil from those places greater than the Boston rates?—A. With the exceptions I have stated, yes, sir.

Q. The Fitchburg Railroad (which is the Fitchburg division of the Boston & Maine) you have heretofore described, have you not?—A. Yes, sir.

Mr. KELLOGG. I wish to offer this tariff I. C. C. No. 1353 with the same stipulation that has heretofore been made—that he may testify from it, and either party may use it on the hearing.

Mr. ROSENTHAL. That is entirely agreeable.

WITNESS. Mr. Kellogg, I would like to qualify the statement I have made. There are some supplements in that tariff later on, along after 1906, that reduce the rates.

Q. I will ask you generally about that. You are speaking about a time prior to the time when the New England roads com-
14361 menced to prorate with the western roads during the year 1906, are you not?—A. Our investigation was based on the rates that were in effect December 15, 1904. The rates in effect at that time are the rates that I have referred to.

Q. Those rates were in effect down to the time that prorating was resumed in New England?—A. Yes, sir—by the New England roads.

Q. By the New England roads?—A. Yes, sir.

Q. Which you have heretofore testified to?—A. Yes, sir.

Q. I supposed that was understood. Now I show you petitioner's Exhibit 1016, bein the Erie Railroad tariff on petroleum and its products from Corry, Pennsylvania; Reno, Pennsylvania; Franklin, Pennsylvania; Oil City, Pennsylvania; Cleveland, Ohio, and Newburgh, Ohio, to various eastern points, and call your attention to page 6, which was testified to yesterday by Mr. Laughlin. The towns named on page 6 under the head, "The following stations on the Boston & Maine Railroad will take rates as noted below: Boston rates," are those towns on the Fitchburg division of the Boston & Maine Railroad shown on the map which you put in evidence in this case as taking Boston rates?—A. I don't recall that the map shows all of these points in detail, but these are the points which we have located on the Fitchburg division of the Boston & Maine Railroad, with the exception of Boylston, Massachusetts; Rock Bottom, Massachusetts, and South Boylston. I have not been able to locate those places.

Q. Are those towns prefixed with reference No. 5 in pur-
14362 suance to this clause in the Red Line billing book: "Shipments of petroleum oil destined to points on or reached via the B. & M. R. R. can not be taken at rates named in this tariff, unless such points are prefixed with reference No. 5?"—A. They are so designated in that guide book, with the exception of the three points which I have named.

Q. How does the Lake Shore Railroad in connection with the Red Line book reach the Maine Central road—whether it has to pass over the Boston & Maine Railroad as an intermediate connection?—A. It would have to pass over one of the New England roads. Yes, sir; I should say the Boston & Maine, by way of Portland.

Q. I show you Baltimore & Ohio Tariff I. C. C. No. 5338, in connection with the eastbound billing instructions of the Erie Railroad, and wish you to state whether the Baltimore & Ohio tariff and the Erie billing instruction make a rate from Cleveland, Ohio, to New England points other than Boston, on petroleum and its products—for instance to Portland, Maine, as an illustration?—A. No, sir; I should say it would not.

Q. Does it to any other New England points?—A. I can not understand under what arrangement it could apply from Cleveland to any point on the Erie Railroad, or connections via the Erie Railroad, from Cleveland proper.

Q. You are familiar with the restrictions in the Erie tariff which were testified to yesterday—that rates on petroleum under the Erie tariff, petitioner's Exhibit 1016, would not apply on the Boston & Maine, the New Haven, and the New England road, except the certain towns named on page 6 on the Boston & Maine, are you not?—

A. I am familiar with that; yes, sir.

14363 Q. One of the points named in this Baltimore & Ohio tariff is Brooklyn, Ohio, which is a suburb of Cleveland, is it not?—A. Yes, sir; I understand so from Mr. Witzel's testimony of yesterday.

Q. In your opinion, if a shipment is taken at Brooklyn, Ohio, with directions to transport it to Cleveland and then from Cleveland over the Erie Railroad to a new England point, would it be carried under the Baltimore & Ohio tariff or under the restrictions of the Erie tariff?—A. It would be subject to the restrictions of the Erie Railroad, on being tendered to the Erie Railroad.

Q. That being the case, would the Erie Railroad make through rates or prorating rates with the New England roads other than the Boston & Albany and the Fitchburg Division of the Boston & Maine?—A. I do not see how it would be possible for the Erie Railroad to accept business from a connecting road to a point that was restricted on shipments originating on their own road.

Q. Then, prior to some time during the year 1906, to which you have heretofore testified, with the exceptions you have given—the Boston & Albany Railroad and the Fitchburg Division of the Boston & Maine, did the Boston rate apply to New England points, on petroleum and its products, for some years prior to 1906?—A. Our investigation discloses the fact that it did not.

Q. And in 1906 you have shown——A. The prorating was resumed by the different roads at different dates during the year 1906.

14364 Q. I show you petitioner's Exhibits 934 and 935, which have already been introduced in evidence, being letters from Mr. M. T. Donovan, of the Boston & Maine Railroad. Were those letters received by the Bureau of Corporations in response to letters written by you, signed by Mr. Herbert Knox Smith?—A. They were.

Q. They were actually received by the bureau?—A. Yes, sir. I recognize them as having been received in answer to letters that were sent by the bureau.

(Paper marked petitioner's Exhibit 1036.)

Mr. KELLOGG. I offer in evidence petitioner's Exhibit 1036, being a letter from the American Oil Works, Limited, signed by T. B. Westgate, to J. E. Dalrymple, general freight agent of the Central Vermont Railway, at St. Albans, Vermont, being the letter called for

from Mr. Ferguson on cross-examination when he was on the stand as a witness for the defendants.

Mr. MARTYN. That is objected to as immaterial and res inter alios.

(An adjournment was here taken until the morning of Thursday, January 21, 1909, at 10.30 o'clock.)

14365 ROOM 627, FEDERAL BUILDING, CHICAGO, ILL.,
Thursday, January 21, 1909, 10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison; on behalf of the defendants, Mr. Moritz Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. F. L. Crawford.

T. C. M. SCHINDLER, recalled, and his direct examination resumed.

By Mr. KELLOGG:

Q. Mr. Schindler, did you examine the way-billing in the offices of the Toledo Shore Line and connections, at Toledo, during the time the Grand Trunk tariff was in force from December 1, 1904, down to about 1906, to see if there had been any shipments under that tariff to New England points of petroleum and its products?—A. I did examine the billing in the two offices of the Detroit-Toledo Shore Line, at Toledo—one at Toledo proper and the other at an outlying station known as Manhattan Junction.

Q. That is a junction where they received oil from connections?—A. Yes; that is where the freight was interchanged with connecting roads—the Belt Railroad and others.

Q. If they received oil from the local refinery they would receive it at that junction?—A. At Manhattan Junction;
14366 switched over to them; yes, sir.

Q. You are familiar with the location of those stations and connections, are you not?—A. Yes, sir.

Q. Did you examine the billing to stations where oil would be received for shipment to New England?—A. Yes, sir; and the only stations of the Detroit & Toledo Shore Line in Toledo.

Q. From an examination of those billings did you find any shipments of petroleum and its products during the period named to New England points?—A. I did not.

Q. Did you find any to other places?—A. I found some shipments of oil moving to Marcus Hook, Pennsylvania, and there were some few shipments going into Canada. None to New England points.

Q. Have you examined defendants' Exhibits 121 and 121-A, which purport to show the switchings on commodities other than petroleum and its products?—A. I have; yes.

Q. Shipped into New England. Have you also examined the Red Line Eastbound Billing Instruction No. 42, which became effective August 1, 1904, and which, I believe, is referred to in that exhibit, to

see how many points there were to which Boston rates applied on all other commodities, or practically all other commodities?—A. I have.

Q. Did you make a memorandum at the time you examined it?—A. Yes, sir.

Q. How many points did you find in the billing book all together in the States of Connecticut, Vermont, Rhode Island, Massachusetts, New Hampshire, and Maine?—A. I examined the original issue of Red Line book 42—not of the supplements—and I found there

14367 to be 1,443 points listed in that book as within those States.

Q. Those are all the points?—A. Those are all the points that I could locate in those States.

Q. How many were there on other commodities—I am speaking now of other commodities than petroleum and its products—to which the straight Boston rate applied?—A. With the exception of a few other articles, such as high explosives, which were prohibited—it varies; possibly some few exceptions—I found there to be 996 points to which the Boston rate applied.

Q. How many other points were there to which the Boston rate applied under certain restrictions?—A. To 199 of the remaining points Boston rates were made to apply, except that such rates could not be made lower than the rates from Cleveland to Boston. And to one of the remaining points the rate from Toledo to Boston was made the minimum rate.

Q. To how many points, therefore, on shipments of other commodities—that is, commodities other than oil—from Cleveland would the Boston rate apply?—A. 1,195 points.

Q. Would the same also be true from Toledo?—A. 1,196 points from Toledo.

Q. What are those exhibits you have in your hand?—A. 121 and 121-A.

Q. Then, on defendants' Exhibit 121, which shows something over 600 towns on which it is stated that there are notes in

14368 the nature of restrictions, many of those restrictions do not prevent the Boston rate applying?—A. No, sir.

Q. Have you examined defendants' Exhibt 125 with the original tariffs referred to in that exhibit as its authority to see whether there were any errors in it?—A. Yes, sir; I have.

Q. Did you find any errors in rates?—A. It is shown in this defendants' Exhibit 125 that the rate of 14½ cents per 100 pounds from Toledo applied only to the north bank of the Ohio River near Louisville, and not to Louisville proper. That is an error, because the tariffs expressly state the rate to be 14½ cents from Toledo to Louisville.

Q. Did you find any errors in the distances? If so, please state them as briefly as possible.—A. The distance from Toledo to Terre Haute I find to be 281 miles instead of 291 miles, as shown in the exhibit. The distance from Toledo to Vincennes is 331 miles instead of 335 miles. Marion, Indiana, is doubtless intended in the place of Marion, Ohio, shown in this exhibit.

Q. That is probably a mistake——A. It is evidently a mistake.

Q. On the face of the exhibit.—A. The distance from Cleveland, Ohio, to Marion, Indiana, 240 miles instead of 264 miles, as shown to have been the distance from Cleveland to Marion, Ohio.

Q. Go ahead.—A. The distance from Cleveland to Richmond, Indiana, is 230 miles instead of 283 miles. The distance from Wellsville, New York, to Philadelphia, is 344 miles instead
14369 of 383 miles.

Q. Referring to defendants' Exhibit 127, the rate to all towns from Toledo, except the last one, in which it is given as 27 cents, was based on this Grand Trunk tariff, was it not?—A. Yes, sir; reference is given on that exhibit to that tariff.

Q. And depends entirely on whether that tariff applies from Toledo?—A. Yes, sir.

Q. And the rate under the head of "Cleveland," marked "Correct Rate," depends entirely upon whether the Baltimore & Ohio could use the Baltimore & Ohio tariff with the Erie billing book——

Mr. ROSENTHAL. There is no doubt about that, is there, Mr. Kellogg? Mr. Felton testified to that.

Mr. KELLOGG. He did?

Mr. FELTON. Yes, sir.

Mr. ROSENTHAL. Mr. Felton was examined concerning it, and testified to it.

Q. The rates from Oil City, referred to in this exhibit, which it is claimed could be made from 3½ to 7½ cents lower than those stated in Government's Exhibit 622, how were those made under this? State whether they were combinations of commodity and class rates.—A. It is my understanding that those rates in the defendants' exhibit are based on the commodity and class rates—those combinations.

Q. How were the rates made up that you used in your exhibit, from Oil City?—A. I used the specific rates published by
14370 the Lake Shore Railroad from Oil City to those points.

Q. The Lake Shore and what other roads?—A. The Lake Shore in connection with the Boston & Maine and Maine Central railroads.

Q. Is that the most direct route?—A. That is probably the most direct route?

Q. Those were through rates, were they?—A. They were the through rates, yes, sir, as shown in the tariff published by the Lake Shore Railroad.

Q. Now, if an agent at Oil City were asked to make a rate to those towns in defendants' Exhibit 127, what tariff would he naturally consult?—A. He would naturally consult the specific tariff naming the through rates.

Q. Reading from his own town?—A. Reading from Oil City to the destination to which the freight was consigned.

Q. Would he be liable to have in his possession a local class rate direct from Boston or Concord when he had a direct rate on his own road?

Mr. ROSENTHAL. I object upon the ground that it is entirely speculative. This man cannot tell what a more or less competent railroad agent at a local station, with certain tariffs by him, might or might not do. He might as well guess that the moon is made of green cheese.

A. Ordinarily he would not have such a tariff as that.

Q. In Government Exhibit 623 you gave the rate to Pittsfield, did you not, via the New York, New Haven & Hartford road?—A. Yes, sir.

14371 Q. What was the purpose of giving that?—A. To show the difference in rates by reason of the refusal to prorate on the oil.

Q. By the New York, New Haven & Hartford?—A. By the New York, New Haven & Hartford Railroad.

Q. Now, in this exhibit are shown certain combinations of rates via Campbell Hall. When were those rates made effective, and how long were they in existence?—A. The rates referred to via Campbell Hall were first published as new rates, effective May 10, 1904. They were withdrawn January 25, 1905, and were again made effective September 1, 1905.

Q. I show you defendants' Exhibit 130. Did you find any error in the rates named in that table?—A. I did.

Q. What are they?—A. The rate of 37 cents shown as the rate from Troy to Alburg is in error, as the tariff referred to as authority (Boston & Maine I. C. C. 2282) makes the rate 36 cents.

Q. Any other?—A. The rate of 15 cents shown as the rate from Rotterdam Junction to White River Junction is not made in connection with the Central Vermont Railroad, the rate via that route being 33 cents.

Q. Is the rate via that route shown?—A. The Government exhibit showed the rates in connection with the Central Vermont Railroad. I also find that Erie Railroad Tariff I. C. C. A–114, referred to as authority for rates to Rouses Point, does not make the rate in

14372 connection with the Central Vermont Railway.

Mr. MARTYN. It does make a rate to that point of that amount?

WITNESS. It makes a rate to that point of that amount, but not in connection with the Central Vermont Railway.

Q. Via what junction did you make up your rate combination in Government Exhibit 624?—A. It is my recollection that I made those up principally via New York.

Q. What junctions are shown in this?—A. These are made on the basis of rates on the combination by way of Troy, Rotterdam Junction, and Albany.

Q. The rates shown to points on the Boston & Maine Railroad from Oil City, under the head "Correct Rate," state whether those are combinations of local class and local commodity rates.—A. The rates in the defendants' exhibit?

Q. Yes.—A. Yes, sir.

Q. That is, the rates from Oil City were commodity rates to junction points, were they?—A. Yes, sir.

Q. And the local rates from junction points were class rates?—A. That is my understanding of it; yes, sir.

Q. What tariff did you use to make your exhibit?—A. I used the Lake Shore tariff, which provided for the through rates.

Q. The same one you just referred to?—A. The same tariff I have previously referred to.

Q. I believe the rates here from Toledo and Cleveland are made, the same as you testified in the other exhibit, on the Toledo
14373 tariff and on the Baltimore & Ohio-Erie tariff, which has been talked about?—A. Yes, sir.

Q. Referring to defendants' Exhibit 131-A—for instance, take the rate to Rutland and Bellows Falls (27 cents from Toledo and 24 cents from Cleveland and 23½ cents from Oil City)—by what route are those rates made?—A. From Toledo the Rutland rate is shown as having been taken from C., H. & D. tariff, and to Bellows Falls as having been taken from C., H. & D., and L. S. & M. S. Railway tariff.

Q. Those rates were not made over the Rutland Railroad at all, were they?—A. I do not understand that they were. The Bellows Falls rate would be in connection with the Boston & Maine, and the Rutland rate would no doubt be in connection with the Delaware & Hudson Railroad.

Q. Could those rates have been made over the Rutland Railroad?—A. I do not so understand it.

Mr. ROSENTHAL. How about New Orleans? Could they have been made that way?

WITNESS. I don't know of any tariff via New Orleans.

Q. Referring to petitioner's Exhibit 625, did you intend to show in that the rates in connection with the Rutland road?—A. Entirely with the Rutland Railroad. And in that connection I would like to make a statement correcting my former evidence as to the rates from Oil City to some of those points—Bellows Falls and Rutland. I did not understand your question at that time as to the combination. Of course I knew that the rate of 23½ cents from Oil City to those points was available via the Pennsylvania Railroad.

Q. You intended by that testimony to state what the rate
14374 was by the Rutland road?—A. And via Norwood; yes, sir.

Q. Please look at defendants' Exhibit 136. Are there any errors in that exhibit in distances? If so state what they are.—A. I figure the distance as follows: From Bradford to Cincinnati, 449 miles; from Wellsville to Cincinnati, 479 miles; from Struthers to Cincinnati, 406 miles; from Titusville to Cincinnati, 401 miles; with corresponding differences in the distances to Louisville.

Q. What do you mean by that?—A. The rate from Cincinnati to Louisville of 114 miles, added to that, would make corresponding changes.

Q. You mean the distance from Cincinnati?—A. The distance from Cincinnati, yes, sir.

Q. All right. Go ahead.—A. From Bradford to Evansville, 656 miles; from Wellsville to Evansville, 686 miles; from Struthers to Evansville, 613 miles, and from Titusville to Evansville, 608 miles.

Q. Will you state whether you found any errors in defendants' Exhibit 146, I mean aside from those that were corrected by the defendants in their corrected exhibit. I am not referring to the ½-cent bridge toll at all.—A. I find the following errors in defendants' Exhibit 146: The rate from Toledo to Charleston, South Carolina, shown as 45 cents per 100 pounds, based on 27 cents to Richmond and 18 cents beyond, should be 27 cents to Richmond and 25 cents beyond.

Q. That is more than the rate shown by the Government,
14375 is it?—A. Yes, sir. The rate of 25 cents is shown in Southern Railway tariff, I. C. C. No. 5618, amendment 141, effective June 21, 1904.

Q. Any others?—A. The rate shown from Marietta to Charleston is also in error for the same reason.

Q. And from Cleveland to Charleston?—A. From Cleveland to Charleston, in the same manner.

Q. Go ahead.—A. The rate to Marion, Alabama, from Whiting, 23 cents to Mobile and 34 cents from Mobile to destination—the authority being Southern Railway I. C. C. 9330. I find that the Southern Railway tariff 9330 did not become effective until April 23, 1905. The previous tariff, I. C. C. 5600, which became effective November 22, 1900, and remained in force until April 23, 1905, did not publish rates to Marion, Alabama.

Q. What was the date covered by your exhibits?—A. Our exhibits were based on the rates in effect in December, 1904.

Q. Any others?—A. Those were the only errors. A number of other rates were made on the combination of commodity and class rates.

Q. The rates you used were what? The commodity rates?—A. The rates we used were the commodity rates.

Q. Have you examined defendants' Exhibit 175. If so, state if you found any errors, and if so, please state what they are.—A. In this exhibit the distance from Pittsburg to Laurens, South Carolina, is shown to be 1,201 miles via Grand Junction. This is doubtless intended to be the distance from Whiting to Laurens. The dis-
14376 stance of 1,233 miles, as shown in government Exhibit 586, represents the distance via the route via which shipment, according to our understanding, was transported; namely, 1,195 miles to Spartanburg, and 38 miles from Spartanburg to Laurens.

Q. Any other errors?—A. The distance from Whiting to Augusta, Georgia, 1,335 miles, is, according to my understanding, also an error. The distance shown in the government exhibit was the distance the property is understood to have been transported. I also find with reference to the distance shown in this exhibit from Whiting to Tuscaloosa, Alabama, 876 miles, as against 1,048 miles, as shown in the government exhibit—the latter being the distance the oil was transported, as indicated by the division-sheet which specified route

via Chattanooga—that it was also wrong. I figure the short line distance from Whiting to Tuscaloosa, Alabama, to be 707 miles instead of 697.

Q. Please look at defendants' Exhibit 182. It is stated in that exhibit that the lumber rate from Chicago to East St. Louis was 8 cents per 100 pounds. Is that correct?—A. Not according to the tariff referred to.

Q. What was the rate?—A. 9½ cents per 100 pounds.

Q. From where?—A. From Chicago to East St. Louis.

Q. What is that 8-cent rate?—A. That is the north-bound rate from East St. Louis to Chicago.

Q. Any other errors in that exhibit?—A. I also found that the rate shown in this exhibit as 6 cents per 100 pounds from Chi-
14377 cargo to East St. Louis applied only upon glucose in tank cars; that the rate on glucose in barrels or packages was 9 cents per 100 pounds.

Q. That exhibit compares the 6-cent rate on tank cars with the rate from Pittsburg?—A. Of 22½ cents, which applies on glucose in packages.

Q. So the rate that should be compared would be the 9-cent rate——A. Yes, sir.

Q.——in packages from Chicago, with the 22½-rate from Pittsburg?—A. Yes, sir.

(Paper marked petitioner's Exhibit 1037.)

Q. I show you petitioner's Exhibit 1037. What is that?—A. That is a table of comparative rates upon various commodities in carloads from Pittsburg, Pennsylvania, and from Chicago, Illinois, to East St. Louis, showing the rate and the revenue per ton per mile for the longer haul to be less than for the shorter.

Q. The defendants selected in their exhibit various commodities, comparing the rate per ton per mile from Pittsburg, and the rate from Chicago to East St. Louis, did they not?—A. Yes, sir.

Q. And these are additional commodities which show the rate per ton per mile to be less from Pittsburg than from Chicago?—A. They are.

Q. These are made up from the original tariffs?—A. These are made up from the same tariffs which were referred to in defendants' exhibit.

Q. Taken from those tariffs which are referred to in the defendants' exhibit?—A. Yes, sir.

14378 Mr. KELLOGG. I offer in evidence petitioner's Exhibit 1037. It is only offered to show the same tariffs which made the rates contained in the defendants' exhibit also contain other commodities on which the rate per ton per mile was less from Pittsburg.

(Paper marked Petitioner's Exhibit 1038.)

Q. I show you petitioner's Exhibit 1038. Does this show the Boston rate from Buffalo and Rochester on petroleum and its products and the tariff under which it is effective?—A. It does; for the dates indicated.

Mr. KELLOGG. I offer in evidence petitioner's Exhibit 1038. This is offered in rebuttal of Mr. Kallman's testimony.

(Paper marked Petitioner's Exhibit 1039.)

Q. Mr. Johnson testified, as I recollect, that the rate from Olean to Rochester should not be compared with the local rates from, say, Bradford to Rochester, but with proportions of through rates. Have you made a statement showing the proportions of through rates accruing between Bradford and Rochester and between Warren and Rochester and between Titusville and Buffalo, in comparison with the rate from Olean to Buffalo?—A. I have.

Q. And from Olean to Rochester. Is that stated in petitioner's Exhibit 1039? A. Yes, sir.

Mr. KELLOGG. We offer in evidence petitioner's Exhibit 1039.

Mr. ROSENTHAL. I object to it upon the ground that it is not rebuttal.

WITNESS. I want to make a correction.

14379 Mr. KELLOGG. All right; make it.

WITNESS. That the rate as named in Mr. Felton's testimony——

Mr. KELLOGG. Well, state it.

WITNESS. I will have to have the tariff here to state it definitely on the record.

[Tariff handed to the witness.]

WITNESS. The rate from Bradford, Titusville, etc., to Norwood, New York, was reduced on April 23, 1905, to 23½ cents per 100 pounds.

Q. Mr. Schindler, as I recollect, Mr. Felton testified that there was a general advance in west-bound rates in Central Freight Association territory about January 1, 1900, at the time the advance on oil rates to the west was made. Were the east-bound oil rates from Whiting raised at that time?—A. No, sir.

Q. Were the east-bound rates on other commodities raised?—A. I can not answer as to that, as to the commodities themselves. There was a general advance in the class rates, which applied to both east and west bound, by reason of the change in the classification.

Q. There was no advance in the oil rates east from Whiting?—A. I do not understand there was, no, sir.

Q. Do you know of any reason why the rate from Toledo to Whiting should be more than the rate from Whiting to Toledo?—A. On oil?

Q. Yes, on oil.—A. I do not.

Q. Mr. Felton stated, I believe, that the rate from Whiting

14380 to Toledo of 10 cents on oil was probably made—or the reason for making it 10 cents was because it could not be more than the rate from Whiting to Cincinnati. Are you familiar with the tariffs from which he testified?—A. Yes, sir.

Q. Assuming those tariffs to be as stated, in your opinion is that any reason why the rate from Whiting to Toledo should be limited

by the rate from Whiting to Cincinnati?—A. I do not think it ever was considered when the rate was made.

Q. It was afterwards made more from Whiting to Toledo than from Whiting to Cincinnati, was it not?—A. Yes, sir.

Mr. KELLOGG. I offer in evidence a pamphlet containing the various orders and rules of the Interstate Commerce Commission, among others being the following, contained on pages 20 and 21:

"INSTRUCTIONS TO CARRIERS LOCATED WHOLLY WITHIN ONE STATE OR TERRITORY, AS TO THE FILING OF TARIFFS RELATING TO INTERSTATE TRAFFIC.

[Circular No. 6.]

INTERSTATE COMMERCE COMMISSION, AUDITOR'S OFFICE,
Washington, February 13, 1888.

Roads located wholly in one State or Territory, which interchange freight or passenger traffic with connections to or from points outside of such State or Territory on through tickets or bills of lading, should file tariffs covering such traffic with the commission.

If such through rates are made by the addition of local rates to the rates of connecting roads, such local tariffs should be filed
14381 with the commission, together with a statement that through interstate rates are made by adding such local rates to the rates of the carrier (naming it) with which connection is made.

If joint rates are made on any basis other than by the addition of the local rates to the through rates of connecting carriers, tariffs showing such rates should be filed with the commsision covering all interstate business transacted thereunder.

For the commission: C. C. MCCAIN, *Auditor.*"

The title page of which book is as follows:

"INTERSTATE COMMERCE COMMISSION.

METHODS OF CARRIERS

and

REQUIREMENTS OF THE ACT TO REGULATE COMMERCE

In The Matter of

CONSTRUCTION, PUBLICATION, AND FILING

of

RATE SCHEDULES.

December 1, 1891.

Reissued August 15, 1894.

WASHINGTON.

GOVERNMENT PRINTING OFFICE.

1906."

It is understood between counsel that either party may refer to the original publication in its entirety, or any part there-
14382 of, on any argument of this case, if they desire.

Mr. KELLOGG. Petitioner's counsel offers in evidence the foregoing regulation as it appears in the second volume of the Interstate Commerce reports published by the Lawyers' Co-operative Publishing Company, on page 9; the first volume of the Interstate Commerce Commission Reports, published by L. K. Strauss & Company for the Commission, on page 657; the Annual Report of the Commission, 1888, on page 169; the 11th Annual Report of the Commission, 1897, on page 90; also the decision of the Interstate Commerce Commission promulgated April 12, 1889, 8 Interstate Commerce Commission Reports, 185; and the 11th Annual Report of the Commission, for the year 1897, on page 90.

Is it understood that these need not be copied into the record, but may be referred to by counsel.

Mr. MARTYN. Yes.

Mr. KELLOGG. Do you want to make any objection to these, Mr. Rosenthal?

Mr. ROSENTHAL. I don't think it is at all necessary.

Mr. KELLOGG. No, I don't think it is either.

Cross-examination by Mr. ROSENTHAL.

Q. You are the same Schindler that testified about a year ago, in Washington?—A. The same one, yes, sir.

Q. As one of the principal railroad witnesses for the Government?—A. I testified in Washington, in February of last year, I think.

14383 Q. What is the position that you hold?—A. With the Government?

Q. Yes, or with anybody else, if you hold more than one position.—A. There might be different positions.

Q. Well, let's have them all.—A. With the Government, I am special agent. I have the title of special agent in the Bureau of Corporations, Department of Commerce and Labor.

Q. You are a special agent of the Bureau of Corporations in the Department of Commerce and Labor. What other position do you occupy?—A. I don't occupy any other official position.

Q. Do you occupy any other nonofficial position?—A. I occupy the ordinary position as a human occupies; I am the head of a family.

Q. Well, in your relation to the Government.—A. No other connection with the Government excepting as I have indicated.

Q. How long have you been a special agent for the Bureau of Corporations?—A. Since about the 5th of June, 1905.

Q. What is the first work you did in that Bureau, generally speaking?—A. Generally speaking, looking up the rates on oil.

Q. Have you had any other work since, excepting in connection with petroleum matters?—A. My duties have not been confined to any particular investigation.

Q. Have you done any other work, since you were appointed in 1905, except in connection with Standard Oil matters?—A. Yes, sir.

14384 Q. How much?—A. I have not kept any special records as to that.

Q. Is it not a fact that since your appointment in 1905 substantially all of your time has been devoted to work done in connection with the various petroleum reports that have been issued by the Bureau of Corporations in connection with this case, the investigation of witnesses, the looking up of witnesses, the preparation of exhibits, and preparation and assistance in the case generally?—A. Largely it has been.

Q. You prepared or assisted in the preparation of most of the so-called railroad exhibits that were put in by the Government in this case, did you not?—A. I did as to a great number of them. There are some of them, however, which I did not prepare.

Q. A great many of them, however, you prepared and testified to when they were originally put in?—A. When they were originally——

Q.——put in as exhibits in this case?—A. By the Government?

Q. Yes.—A. Yes, sir. The evidence shows that, I believe.

Q. Then on our defense we attacked the correctness of a great many of the exhibits which you had so prepared, did we not?—A. You attacked the correctness of some of them.

Q. And since then you have been doing a good deal of work for the purpose of rehabilitating some of those exhibits which we attacked?—A. I have been checking over the exhibits which you presented, as far as they pertain to railroad rates.

14385 Q. Were you assigned by the Bureau of Corporations to assist the Department of Justice in the conduct of this case?—A. I get my orders from the Commissioner or Deputy Commissioner or the Acting Commissioner, from time to time. I have not been assigned to any particular case.

Q. You get your orders from either the Commissioner (Mr. Smith) or the Deputy Commissioner (Mr. Durand)?—A. Yes, sir; or the Acting Commissioner in the absence of those gentlemen.

Q. In pursuance of those orders you have been working during these years that you speak of?—A. Yes, sir.

Q. Besides making up these exhibits that you have testified to (a year ago, in Washington) did you talk with a great many witnesses that the Government called as its witnesses in this case?—A. No, sir; not to any great extent; not in this particular case.

Q. To what extent would you say that you have interviewed Government witnesses who have been called in this case?—A. Who were subsequently called after my interview, do you mean?

Q. Let's divide it up and say those who were subsequently called after your interview.—A. There have not been very many. I could not tell you the number, Mr. Rosenthal, nor approximately the number, because I have not kept any record of it.

Q. How many persons have you interviewed in connection with the issues involved in this case, who either were called or were

14386 not called after your interviewed them?—A. I would have

to give you a similar answer as to that, because I really haven't kept any record of them. I don't know.

Q. Give me your best judgment, based upon your very good recollection.—A. I don't think I could, approximately, even, because I have not kept any account of that. I can not even approximately state to you the number.

Q. Is that because the number is so large?—A. Not particularly because the number is so large——

Q. Because it is so small?—A.——but it has been at various times, and I would not like to say to you how many, or approximately how many, because I don't believe I could do it truthfully.

Q. Could you give it within a thousand?—A. I presume we might reduce that by 50 per cent, and I would still be——

Q. Then you can come within 500 of giving us the number of people you have interviewed?—A. Oh, yes; I presume so.

Q. Well, say how close you can come to it.—A. I should say probably 30 or 40, in this case. It may have been more and it may have been less.

Q. You also did some work in the celebrated $29,000,000 case, didn't you?—A. I had that honor; yes, sir.

Q. And you interviewed a great many witnesses in that case on behalf of the Government, didn't you?—A. I secured considerable evidence in that case; yes, sir; either papers or witnesses.

14387 Q. And you were present throughout that whole trial?—A. With the exception of one day.

Q. And you testified there as a witness for the Government, did you not?—A. No, sir; I did not.

Q. You did not testify as a witness?—A. I was not called.

Q. Well, you were the right-hand man of the district attorney, so far as the railroad evidence in that case was concerned, and you were sent here for the purpose of helping him, were you not?—A. I was sent here for the purpose of helping him.

Q. And you were also present assisting in the prosecution of the Standard Oil Company at Rochester, New York, were you not?—A. Yes, sir.

Q. And that has been your principal work ever since you have been connected with the Government?—A. As I stated before, I have been largely engaged in work pertaining to rate matters.

Q. At Rochester, New York, your judgment was consulted as to whether certain jurors should be accepted on the jury, was it not?—A. I believe I was consulted there with reference to the acceptance of some of them.

Q. Notwithstanding the fact that practically all of your governmental work has been as you have just indicated, and notwithstanding the fact that you have been assisting in the way that you have, even to the extent of helping the Government secure its jurors in criminal cases prosecuted against the Standard Oil Company, and

14388 notwithstanding the fact that these exhibits which you yourself prepared were attacked by us as incorrect both in fact

and in theory, you still regard yourself, I suppose, as an absolutely impartial witness, so far as the expression of opinion merely is concerned, in this case?—A. I have tried to be absolutely fair. I can say that candidly.

Q. Well, you still regard yourself, notwithstanding all those things, as a perfectly fair and impartial expert to express an opinion?—A. I have never called myself an expert, sir.

Q. Haven't you been expressing expert opinions upon the construction and interpretation of tariffs here for the last 24 hours?—A. I have been doing that, sir, but I have never——

Q. And is not your testimony during the last 24 hours filled with merely the expression of opinions, and has not Mr. Kellogg time and time again put up the question to you "In your opinion" or "in your judgment, what does this tariff mean?"—A. He has.

Mr. KELLOGG. The testimony shows for itself what I have asked him.

Q. So that a good part of your testimony during the last 24 hours has been merely opinion testimony, hasn't it?—A. Some of it has been based on an opinion, and others on——

Q. Now, opinion testimony is expert testimony, is it not?—A. Well, you may term it so.

Q. And you regard yourself as a perfectly fair and impartial expert witness in this case, do you?—A. I believe that I am fair, yes, sir.

14389 Q. And you are willing to swear to that, are you?—A. I am willing to swear to that, yes, sir.

Q. You are willing to swear——A. I am willing to swear that I believe that I am fair.

Q. Are you willing to swear that you are a fair witness? Not that you believe that you are, but that you are.—A. I have a right to say what I believe——

Q. Or do you wish to qualify as an expert upon that?—A. Sir?

Mr. KELLOGG. Oh, now, this is pettifogging.

WITNESS. I don't believe that it is necessary for me to do that, Mr. Rosenthal. I have told you that I am willing to swear; and to the best of my knowledge I am fair.

Mr. KELLOGG. Mr. Rosenthal, I think that this witness is entitled to be treated fairly by you.

Mr. ROSENTHAL. I am trying to treat him with the utmost fairness.

Mr. KELLOGG. I don't think so.

Mr. ROSENTHAL. I say that when you undertake to call as one of your expert railroad witnesses a man who has been your right-hand man with Mr. Durand in working up this case, you might as well take the witness stand yourself and swear to it.

Mr. KELLOGG. Haven't you called Mr. Felton as your expert witness—who is an employe of the Standard Oil Company and has worked this case up for them for months?

Mr. ROSENTHAL. Most assuredly. And in addition to that, ten or twelve of the most eminent railroad experts in the country—and you have not called one.

Mr. KELLOGG. Yes, we have, a good many of them.

14390 Q. Now, in response to questions that were put to you by Mr. Kellogg in substantially the following form: "In your opinion, Mr. Schindler, what does this tariff show;" do you wish the court to understand that when you make those answers you are swearing positively that the tariff does show or does not show a certain thing, or that after all it is only your opinion?—A. I am testifying to the best of my knowledge.

Q. Well, please answer the question.—A. I can not answer it in any other way. I will answer it as directly as I can.

Q. Now, take the two tariffs concerning which there has been a great deal of testimony in this case—Grand Trunk tariff I. C. C. A-944 and the National Despatch-Great Eastern Line No. 9. Do I understand you to swear positively that those two tariffs taken together do not make a rate to points in New England other than Boston, or merely that in your opinion they don't?—A. In my judgment they do not, not even to Boston, the two, one in connection with the other.

Q. When you say "in my judgment" do you mean "in my opinion?"—A. I mean according to my best understanding and best knowledge.

Q. Well, you haven't any knowledge outside of the tariffs themselves, have you?—A. No, sir. I haven't any doubt as to my statement, either.

Q. And all that you mean to swear to in that regard is that you interpret those tariffs, in your opinion, as meaning as you testified?—A. In my judgment; yes, sir.

14391 Q. Why do you insist upon the word "judgment" rather than "opinion?" Have you any particular theory about that?—A. No, sir.

Q. Not at all?—A. None whatever.

Q. Now, you have undertaken to testify here that the mileages stated in a number of defendants' exhibits are wrong. Where did you get your mileages from?—A. From the Official Railway Guide principally.

Q. Have you got that here?—A. No, sir.

Q. Why didn't you bring it here?—A. I didn't think it was necessary.

Q. What Official Railway Guide?—A. Published at 24 Park Place, New York.

Q. Well, what one?—A. We get the current numbers at Washington, and I have taken the distances out of the different ones.

Q. It frequently happens, does it not, that railroad distances can be estimated in different ways, to the extent of making a difference of a few miles?—A. Different routes, you mean?

Q. Yes.—A. Oh, yes.

Q. We discovered that here some months ago, didn't we?—A. The distance via different routes differs.

Q. And it sometimes happens that these railway guides differ in their stated mileages, does it not? We also discovered that here, didn't we?—A. Mr. Felton, I believe, was misled with reference to the Lake Shore mileage.

Q. Either he or you.—A. No; I wasn't misled as to that.

14392 Q. But we found two different guides that stated the mileage differently?—A. If they had been interpreted properly I think they would have figured out the same results.

Q. You think they would?—A. Yes, sir.

Q. Now, where is that Official Guide that you used in getting your corrected mileage?—A. According to this testimony this morning?

Q. Yes, sir.—A. That guide is in Washington, I think, if it has not been destroyed.

Mr. KELLOGG. You can get them here, can't you?

Q. Can you describe it so that we can get it?—A. Yes.

Q. What do you call it? You have one there. [Indicating.] I saw one here this morning. It was similar to that.

(A guide was handed to the witness.)

Q. The official what?—A. "The Official Guide of the Railways," it says here.

Q. That is not published by the Government?—A. No, sir. The Government is a subscriber to it.

Q. Did you get your mileage from a guide of which that is a copy?—A. Similar to this; of a previous number.

Q. In your estimate of mileage did you ever estimate the mileage by taking the steam divisions of electric roads?—A. I did in one instance; yes, sir.

Q. In what instance?—A. Some distances from Lima, Ohio.

Q. That was in connection with what exhibit that you pre-

14393 tended to correct here?—A. I did not pretend to correct any such exhibits in this recent testimony. That was when Mr. Felton testified.

Q. You mean that you used that in your original exhibits?—A. No, sir.

Q. Where did you use it?—A. I used that to correct Mr. Felton.

Q. That is to say, instead of taking regular steam mileage, you took a division of an electric road which used steam over that particular division?—A. Between Lima and Defiance, Ohio. That is, as I understand it, a steam road operated by an electric road.

Q. Well, in getting out your alleged mileages in your alleged correction, did you take only workable routes, or did you pay any attention to the question as to whether the route was a workable route or not?—A. No; I didn't pay any attention to that, because it is pretty difficult to distinguish a workable route from any other route. Where I stated a short route, I stated the shortest mileage I could find.

Q. Regardless of whether it might be a workable route or not?—A. Yes; regardless of that fact.

Q. Or whether the combination used was one in connection with which percentages would ordinarily prevail—you paid no attention to that either, I suppose?—A. No; I paid no attention to that, because I have no means of knowing just what the percentages are, and in a great many instances arbitrary mileage is used in the making up of percentages.

Q. I call your attention to I. C. C. No. A-944, page 2, and
14394 to the line directly underneath the list of stations at the top, reading as follows: "For list of stations to which above rates apply see various fast freight line billing instructions." Did you examine all of those fast freight line billing instructions?—A. I can't say that I did, because they are not enumerated there.

Q. No.—A. "Various" is a pretty broad term.

Q. How many did you examine?—A. I examined several of them, three or four of them, of the fast freight lines operating over the Grand Trunk system.

Q. Only three or four?—A. I think so.

Q. About how many are there all together of those fast freight line billing instructions?—A. The only ones I have reference to are those enumerated on the outside page. I did not examine all of those.

Q. So you don't know whether all of those contain that petroleum rule exception or not, do you?—A. No, sir. That tariff was put in evidence in connection with that guidebook to establish the fact that rates could be made from Toledo on that basis, and those were the ones that I principally consulted.

Q. Is it not a fact that every one of those fast freight line billing instructions contained that petroleum rule?—A. I can not say as to that. I can not say as to all of them.

Q. How is that?—A. I can't say as to that.

Q. I understand you to express the opinion that tariff A-944 together with the fast freight line billing instructions only makes
14395 a rate to Boston, Massachusetts, and not to any other New England town?—A. As I remember it, Boston is the only New England point named in that tariff.

Q. Is Boston the only New England point, then, to which a rate is made in that tariff?—A. I do not think a rate is made to Boston, in connection with that guidebook.

Q. You think a rate was made to Boston by what? by the tariff alone, A-944?—A. It may have been made. There is a rate of 27 cents shown to Boston.

Q. Does I. C. C. No. A-944, of the Grand Trunk, make a rate on petroleum of 27 cents from Toledo to Boston?—A. It names such a rate; yes, sir.

Q. It makes that rate, does it not?—A. Yes, sir; it makes that rate. But, understand, I do not admit that it makes it in connection with that guidebook. I want you to understand that.

Q. You have already expressed your opinion upon that. It makes a rate without the Great Eastern billing instruction, doesn't it?

Mr. KELLOGG. Yes, that is right.

A. Yes, but not in connection with the billing instruction.

Q. It makes a rate without it, doesn't it?

Mr. KELLOGG. He has said yes once.

Mr. ROSENTHAL. Well, now let's see whether he will say it.

A. I said it does, independent of that book.

Q. Then I. C. C. A–944, taken as a tariff by itself, makes a rate of 27 cents from Toledo to Boston on petroleum, does it not?—A. A specific rate; yes, sir.

14396 Q. What roads run into Boston?—A. The New York, New Haven & Hartford, the Boston & Maine, and Boston & Albany.

Q. So the Grand Trunk Railway system had, by virtue of tariff I. C. C. No. A–944, a rate of 27 cents on petroleum from Toledo to Boston, did it not?—A. The Detroit & Toledo Shore Line Railroad.

Q. The Grand Trunk Railway system?—A. The Grand Trunk Railway does not run into Toledo itself. The Detroit & Toledo Shore Line is the railroad into Toledo.

Q. Very well; the Detroit & Toledo Shore Line Railroad was owned by the Grand Trunk Railway system, was it not?—A. Partly. Jointly. The Clover Leaf and the Grand Trunk own it.

Q. What route would petroleum take that was shipped from Toledo to Boston under this tariff, I. C. C. No. A–944, at the 27-cent rate? I show you, so that you may have it before you, the map as published in the Official Guide, which you referred to a few moments ago. [Handing Official Guide to witness.]—A. Not being entirely familiar with the different routes of the Grand Trunk Railroad to Boston, I may not be able to answer you intelligently. They have various routes to Boston, as I understand it.

Q. Suppose you were the agent of the Shore Line road at Toledo, and a carload of petroleum was offered to you to ship to Boston, Massachusetts, under that tariff, I. C. C. No. A–944, how would you route it?—A. I would route it by the route by which I was allowed to route it.

14397 Q. Oh, yes; but how would you route it under that tariff?—A. I am not the agent of the Detroit & Toledo Shore Line, and I could not tell you that, Mr. Rosenthal.

Q. I understand that you are not.—A. I could not tell you the route.

Q. You have an opinion, have you not?—A. They have a number of routes.

Q. Well, give us any one of them.—A. If I thought of routing it in connection with the National Despatch——

Q. Give me any one route that you as agent for the Shore Line road at Toledo would route that carload of petroleum by to Boston.—A. The first thing I would attempt to do if I was an employee of the Grand Trunk Railroad would be to give the Grand Trunk

Railroad the longer haul. If I picked up a guidebook that would give them the longer haul, and saw that the movement of petroleum was restricted as to that route, I would look up another route.

Q. Give me any one route by which you could route that from Toledo to Boston.—A. I could route that to Detroit over the Detroit & Toledo Shore Line; that is, I think it would be a workable route; I have not the percentages. And from Detroit to the Niagara frontier.

Q. Over what line?—A. Over the Grand Trunk Railroad; delivering it at Niagara Falls or Suspension Bridge to the New York Central & Hudson River, routed by way of Albany and the Boston & Albany Railroad into Boston. That is one route.

14398 Q. Route it by way of Albany over the New York Central and then over the Boston & Albany from Albany to Boston?—A. Yes; or the Boston & Maine from Rotterdam Junction.

Q. From Rotterdam Junction, which is near Albany?—A. Near Albany.

Q. Does the route which you have indicated there give the Grand Trunk road the longest haul that it could get between Toledo and Boston?—A. I imagine not, sir.

Q. Now will you give us the route that would give the road of which you were an employee the longest haul?—A. That route there, I presume, would give the longest haul—as indicated by that National Despatch-Great Eastern Line book.

Q. Just indicate the route?—A. I am not familiar with the junction points where the delivery is made. In fact, I never handled very much business——

Q. Regardless of the junction points, give us the route that, in your judgment, you would route that carload of petroleum over, in order to give the Grand Trunk the longest haul in getting the oil from Toledo to Boston?—A. There being nothing to prohibit the routing of the oil?

Q. Certainly; assuming that you have only that tariff A-944, how would you route it to give the Grand Trunk the longest haul?—A. That would depend altogether on conditions. I would not route it by a line that prohibited the handling of it; if that was indicated as the longer route, I would not send it that way.

14399 Q. But this is the only tariff that you have (944) that has any application?—A. It was handed me in connection with that Despatch book.

Q. Yes, but we are excluding the Despatch book now, at your suggestion that that has not anything to do with petroleum because petroleum is excluded. Now you take the tariff which does make the rate of 27 cents to Boston, and you route it over the Grand Trunk Railway system in such a way as to give the Grand Trunk Railway the longest haul, please.—A. Well, sir, I would have——

Q. You very carefully selected one route. Now give us another?—A. Assuming that there are no restrictions?

Q. Assuming that that is the tariff, and the only tariff, that makes that 27-cent rate.—A. And knowing that there were restrictions? I knew there were restrictions; and, as agent, knowing there were restrictions, I would have to route that by way of Niagara frontier.

Q. You would not consult the National Despatch-Great Eastern Line billing instructions, would you, in connection with the routing of a carload of oil from Toledo to Boston under I. C. C. No. A-944?—A. Those guide books generally indicate how the freight is to be billed; and if I was not familiar with the billing that is what I would naturally have to refer to.

Q. Would you consult the National Despatch-Great Eastern Line No. 9 if you were asked to ship a carload of oil under I. C. C. No. A-944 from Toledo to Boston?—A. If the book had been presented to me in connection with the tariff——

14400 Q. Oh, no, not if the book had been presented to you, but assuming that a carload of oil is presented to you by a shipper who does not know anything about the tariffs, and he asks you what the rate is to Boston, and you say "27 cents under I. C. C. No. A-944," and you are the agent of the Grand Trunk Railway System, now, how many different routes——A. "The Detroit & Toledo Shore Line," put that.

Q. How many different routes could you route that traffic by to Boston?—A. I am not familiar with the routing of the Detroit and Toledo Shore Line sufficiently to answer that question.

Q. Do you mean to say that the route that you have indicated is the only route that you can name?—A. Oh, no. No, sir.

Q. Well, name one other.—A. I presume that there is a route from Toledo to Boston via Detroit. (Referring to Official Guide.)

Q. Montreal?—A. Now, just wait a minute.

Q. St. Johns, Quebec?—A. Just wait a minute. I am not able to trace that up so quickly. I don't know very much about this Canadian territory. This indicates that it could go via Montreal down to Boston. It indicates more particularly that the route would be by way of St. Albans.

Q. Via White River Junction?—A. In connection with the Boston & Maine? White River Junction?

Q. Yes, sir.—A. That map indicates that there is such a route.

Q. That would be the route that would give the Grand Trunk the longest haul?—A. Yes, sir.

Q. A much longer haul than the one you indicated here a while ago?—A. Yes, there is no question about that.

(A recess was here taken until 2 p. m.)

14401 Q. Mr. Schindler, the route that you last indicated, as I understand, was the Detroit & Toledo Shore Line to Detroit, then the Grand Trunk to St. Johns, and then the Central Vermont from St. Johns to White River Junction, then the Boston & Maine from White River Junction to Boston. I am right about that, am I?—A. I said there was a line of railroad of that kind. St. Albans, however, I believe I said, instead of St. Johns.

Q. No; I think you said St. Johns.—A. No, I didn't say St. Johns; I said St. Albans.

Q. Well, St. Johns is the connection there, is it not—if you will look at the map. St. Johns is the connection between the Grand Trunk Railway System and the Central Vermont.

Mr. MARTYN. An examination of the Central Vermont Railway map will show that. The Grand Trunk does not.

(Witness refers to map.)

A. This would seem to indicate that that was St. Johns, because St. Johns is the first station shown after leaving Montreal.

Q. Mr. Schindler, on the first page of this tariff, I. C. C. No. A-944, I find here "Grand Trunk Railway System (lines west of Detroit and St. Clair rivers) and Detroit & Toledo Shore Line Railroad in connection with:" Then it names a great many railroads—the Atchison, Topeka & Santa Fe, and the Boston & Albany, and, among others, the Central Vermont Railway. What does that mean?—A. I suppose that was intended to mean that the Central Vermont was a party to the tariff.

14402 Q. Well, that is what it means, isn't it?—A. That would indicate that, yes, sir.

Q. That is, that all of these railroads that are named in this tariff in that way were parties to the tariff?—A. They were made parties to the tariff, yes, sir.

Q. Why is a railroad made a party to a tariff; what is the purpose of that?—A. That would indicate that that road was used on the line to destination, as an intermediate line or a terminal line.

Q. Or a connecting line?—A. Or a connecting line, yes, sir.

Q. That is, railroads are not made parties to a tariff in which they have no interest whatever, and where the freight named in that tariff could not by any possibility be shipped over that railroad?—A. That is not ordinarily the case, no, sir. There might be exceptions to that.

Q. It would be an accident if you found an exception, wouldn't it?—A. I don't know that you could call it an accident, Mr. Rosenthal.

Q. Or a mistake?—A. It would be a mistake.

Q. Yes.—A. There might be more railroads added than were really interested in the tariff.

Q. Will you be good enough to tell me how freight moving from Toledo to Boston could move over the Central Vermont Railway—all of the ways that it would move over the Central Vermont Railway.—A. Under ordinary conditions? There being no restrictions?

Q. Yes.—A. Under ordinary conditions, as I understand it, although I am not entirely familiar with the Grand Trunk Railway system, I think that it could move in the manner I have

14403 indicated.

Q. That is, to St. Johns, to White River Junction, over the Central Vermont, and over the Boston & Maine to Boston?—A. Yes. Or it might move down one of those connections over the New York, New Haven & Hartford.

Q. You mean over the Central Vermont?—A. It might to a connection with the New York, New Haven & Hartford and move on into Boston in that way.

Q. The only place, however, that the Grand Trunk connects with the Central Vermont is there at St. Johns, is it not?—A. I am not entirely familiar with that situation. So far as I know, that is—

Q. Well, you have the map right in front of you.—A. So far as the map indicates, I would say that the map so indicates.

Q. I think there is no doubt about that. As I understood you this morning, this tariff, I. C. C. No. A-944, names a 27-cent rate from Toledo to Boston?—A. Yes, sir.

Q. There is not any doubt about that, is there?—A. That is what the tariff shows. It shows a rate on petroleum from Toledo to Boston of 27 cents per 100 pounds.

Q. And there is not any doubt that the Central Vermont Railway is named as a party to the tariff?—A. The Central Vermont is named as one of the railroads, among the others.

Q. So that under this tariff, freight could be shipped from Toledo to Boston over the Central Vermont Railway along the route that I indicated a moment ago?—A. If there were no restrictions on it, yes, sir.

14404 Q. You do not find any restrictions on I. C. C. No. A-944 with respect to shipments to Boston, do you?—A. It gives reference to the fast freight line. I am placing my interpretation upon the tariff in connection with this book which was introduced along with the tariff.

Q. This tariff, I. C. C. No. A-944, either does or does not make a rate to Boston. Now, which does it do?—A. It specifies a rate of 27 cents per hundred pounds from Toledo to Boston.

Q. Is there any qualification whatever upon the rate of 27 cents from Toledo to Boston?—A. Not in the tariff itself, handled alone.

Q. Is there any reference made in this tariff which in any wise could be construed as changing the 27-cent rate from Toledo to Boston?—A. There might be something in that to construe it as to routing.

Q. If a shipper shipped oil under this tariff from Toledo to Boston, during the time that it was in force, over the Grand Trunk to St. Johns, and over the Central Vermont to White River Junction, and then over the Boston & Maine to Boston, and paid 27 cents, would he not be paying the regular tariff rate?—A. He could not have shipped in that way.

Q. Why not?—A. Because there were restrictions on that route.

Q. Point out on the I. C. C. No. A-944 the restrictions.—A. There are no restrictions on that, excepting as it has reference to the guide books.

Q. What?—A. There are no restrictions on that excepting
14405 as to reference to guide books.

Q. What is the reference to the guide book that restricts it?—A. The guide book itself.

Q. What is the reference in this tariff to the guide book?—A. It says on there "Refer to various guide books."

Q. Read what it says.—A. In the first place it states on the face of it "In connection with certain lines."

Q. Yes. Now, that means that those lines are parties to the tariff?—A. That would be my interpretation.

Q. It can not mean anything else, can it?—A. It might mean something in addition—that it would be routed in connection with those lines.

Q. That is the first thing. What is the next thing?—A. "For list of stations to which above rates apply see various fast freight line billing instructions."

Q. "For list of stations"——A. Yes.

Q. ——"to which above rates apply"—see what?—A. "See various fast freight line billing instructions."

Q. The "above rates" referred to there among others is the Boston rate of 27 cents, is it not?—A. Yes, sir. Boston is shown there as——

Q. For the list of stations, therefore, to which that Boston rate of 27 cents from Toledo to Boston applies, you are to consult the fast freight line billing instructions, are you not. That is just what that says, is it not?—A. Yes, sir.

Q. For the list of stations to which that 27-cent rate applies. In other words, if you wish to find some other stations to which
14406 the 27-cent Boston rate applies, you are to consult the various fast freight line billing instructions; that is true, is it not?—

A. That is true. That is what it says here.

Q. That is just what it says?—A. Yes.

Q. That does not affect the Boston rate itself, does it?—A. That would affect the Boston rate to this extent, Mr. Rosenthal: That an agent having the shipment tendered him for Boston——

Q. Not what an agent would do, but what the tariffs do. How would that affect the Boston rate itself?—A. It would affect it when it came to the billing of the freight out.

Q. You mean, when it came to routing the freight?—A. Yes.

Q. How, now?—A. Because an agent in handling the freight would necessarily, if he was not familiar with the routing, have to refer to his guide book to get the routing, to know whether there were any terminal deductions, or whether there were any deductions whatever to be made. In doing that, if he consulted this book which has been introduced here in evidence in connection with this, he would find that the acceptance of petroleum was prohibited for Boston as well as any other point on that guide book.

Q. Then, according to your interpretation of that tariff, I. C. C. No. A-944, when taken in connection with the billing instructions which you say that line refers you to immediately under the Boston 27-cent rate, it would take away the rate to Boston itself,
14407 would it not?—A. So far as that book is concerned; that is, by that route.

Q. It would absolutely take away the rate to Boston, would it not?—A. No, no; because I assume that the Grand Trunk had other routes for reaching Boston.

Q. Will you point out to me just why the St. Johns-White River route is not just as clear a route that the agent could take as the Albany route which you named this morning?—A. So far as that tariff is concerned, that billing instructions, it is.

Q. Yes.—A. But there must be some other billing instructions or some other arrangement to enable the Grand Trunk——

Q. Have you got the other billing instructions?—A. No, sir; I haven't any other.

Q. Have you been able to discover any other such?—A. I have no doubt that the Grand Trunk——

Q. Have you been able to discover any other?—A. Any other what?

Q. Any other billing instructions.—A. Oh, yes; there are other billing instructions.

Q. No, no. Have you discovered them? Have you discovered any other billing instructions that affect this question?—A. There are billing instructions noted on here.

Q. I understand. Have you examined them?—A. I have examined some of them.

Q. Do they affect the routing at all?—A. If any of them should place any restrictions on that territory they would.

Q. Can you point to a single billing instruction anywhere
14408 that will affect the routing of the freight from Toledo to Boston under this tariff?—A. The billing instructions that are issued by the various fast freight lines indicate the route; and, if it is to be rebilled en route, it indicates the junction point and to what point it is to be billed.

Q. This tariff indicates that one of the roads that is joined in the tariff is the Central Vermont, does it not?—A. Yes, sir.

Q. The billing instruction that you speak of, as you interpret it, takes the Central Vermont out of the tariff, does it not? Isn't that the effect of it?—A. It prohibits the acceptance of oil for all the points named in that billing book.

Q. That is it exactly. So that here is a tariff which applies to nothing but oil, in which the Central Vermont is made a party; is not that true?—A. That is true—one of the parties.

Q. And then this very same oil tariff refers to a billing instruction which you say takes oil out of the tariff?—A. It does; for that territory. It takes it out so far as that route is concerned, you understand.

Q. So far as the Central Vermont route is concerned, that is right?—A. Yes, sir; that is right.

Q. So you first have a special oil tariff here, issued in December, 1904, which names the Central Vermont Railway as one of the connecting lines by which the freight may be gotten to Boston,
14409 and this tariff, according to your interpretation, refers to

a National Despatch-Great Eastern Line, which was issued in 1903 (the year before), which National Despatch-Great Eastern Line, according to your interpretation, takes the Central Vermont Railway out of the possibility of routing petroleum?—A. That is right.

Q. From Toledo to Boston?—A. That is correct.

Q. And that is what your interpretation necessarily leads to, is it not?—A. That is as I interpret it.

Q. Your interpretation also leads to the inevitable conclusion that there is not even a rate from Toledo to Boston?—A. Not necessarily.

Q. Have you discovered any billing instruction, any fast freight line billing instruction, that excepts Boston from that petroleum rule that you have pointed out in the fast freight line billing instructions?—A. The billing instructions itself does that, Mr. Rosenthal.

Q. Where?—A. Let me see it.

Mr. DURAND. He does not understand you.

Q. Mr. Durand says you do not understand my question.—A. Possibly I don't.

Q. Now, let us see if we can get together.

Mr. KELLOGG. As to any other route.

Q. Have you discovered any fast freight line billing instruction which makes an exception as to Boston, so far as petroleum is concerned?—A. Which makes an exception as to Boston proper?

Q. Yes, sir.—A. I do not understand your question entirely, Mr. Rosenthal. Let me explain to you what I——

14410 Q. Let me see if I can make myself clear. I. C. C. No. A-944 makes, on its face, a 27-cent rate from Toledo to Boston, does it not?—A. Yes, sir.

Q. You say that that, however, is limited by the phraseology: "For list of stations to which above rates apply see various fast freight line billing instructions." Am I right about that?—A. If you would consult the various fast freight line billing books in ascertaining their route, to examine their billing.

Q. Is there anything in this phraseology, "For list of stations to which above rates apply," namely, for list of stations to which above rate of 27 cents from Toledo to Boston applies, "see various fast freight line billing instructions," that indicates that you are to consult the fast freight line billing instructions to ascertain what the route is?—A. In a measure; yes, sir.

Q. What language is there, or what words are there in that line, "For list of stations to which above rates apply see various fast freight line billing instructions," that indicates that you are to consult the fast freight line billing instructions so as to get the routing? Point out a word in there that indicates that that is what that means.—A. In the first place, some one of these guide books might indicate the list that would take the Boston rate.

Q. No. You point out a word in that line which I have just read to you that indicates that you are to consult the fast freight line

billing instructions to get your routing. Give me a single word in that line that indicates that. Please examine the line.—A. I have examined it.

14411 Q. Give me a word there.—A. I have examined the line. In the first place, you would examine it for the points taking the rates.

Q. In the first place you would examine it for the purpose of ascertaining just what it says there——A. Yes, sir.

Q. ——namely, to get the list of stations to which the Boston-Toledo 27-cent rate applies, would you not?—A. Yes, sir.

Q. Very well. Then you would consult the Great Eastern fast line billing instruction to get your list of stations that take Boston rates, would you not?—A. Yes, sir.

Q. And you would find there many pages of stations that have Boston rates, would you not?—A. Yes; there are many stations represented as taking Boston rates, where there are no restrictions.

Q. Very well. But you say that those many pages of stations in the fast freight line billing instructions which there are indicated as taking Boston rates would not take the Boston petroleum rate, because of the rule printed on the second or third page of the billing instructions excluding petroleum?—A. So far as is governed by that book; yes, sir.

Q. So that that interpretation leads you to the conclusion that none of the list of stations in the fast freight line billing instructions referred to could take the Boston rate because of the limitation and restriction in that rule?—A. You have it exactly.

14412 Q. That is it exactly, is it not?—A. Yes, sir; that is it.

Q. Now, will you please tell me, if that interpretation is correct, why in the world the man who constructed this tariff put this phraseology in here: "For list of stations to which above rates apply see various fast freight line billing instructions," if there is no list of stations in any fast freight line billing instruction not subject to the limitation of the petroleum rule that you pointed out?—A. Well, sir, I can not tell you, Mr. Rosenthal, what the gentleman had in his mind.

Q. So that under your interpretation of this tariff, I. C. C. A-944, the phraseology, "For list of stations to which above rates apply see various fast freight line billing instructions," would be absolutely meaningless, so far as having any reference to any list of stations merely is concerned, would it not? Now, mark the question.—A. Named in the book?

Q. Named in what book?—A. Which prohibits its acceptance. The National Despatch-Great Eastern Line.

Q. So that, inasmuch as they are named in the book which contained the rule excluding petroleum, this reference to the book for the purpose of getting the list of stations is absolutely meaningless, is it not?—A. That does not indicate any special book—that note there.

Q. But all these books contain that limitation.—A. Well, there may be some of them that are different from that.

Q. But they all contain the limitation with respect to
14413 petroleum, do they not?—A. I can not say as to that, fully.

Q. Well, all that you have examined do?—A. Well, I don't know that.

Q. Do all that you have examined contain it?—A. Not all of it.

Q. Not all of it?—A. No, sir.

Q. Which one does not?—A. I notice that the Commercial Express did not.

Q. Any other?—A. I did not see any other that didn't. I did not examine all of them.

Q. Now, Mr. Schindler, I will get back to my original question and see if I can not get an answer to it. In this phraseology, to wit: "For list of stations to which above rates apply see various fast freight line billing instructions." "For list of stations to which above rates apply"—what is there in that sentence that has anything to do with routing the freight, or that indicates to your mind that it has anything to do with the routing of freight——A. Well, to this extent——

Q. ——and if so, please point out the portion of that sentence which indicates to your mind that it refers to freight routing, instead of merely to a list of stations.—A. It refers, in the first place, to a list of stations.

Q. And in the second place, now, point out what list it refers to, by language.—A. I do not know that I can point it out. I did not frame the language.

Q. Oh, no; but you point out any language in that sen-
14414 tence—a word or a combination of words—that leads you to the conclusion that it means anything other than just what it says, namely, "For list of stations see the billing instructions." Now, here is the tariff.—A. I have seen the tariff, Mr. Rosenthal; it is not necessary for me to examine it.

Mr. ROSENTHAL. Read the question, please.

(Question read by the reporter.)

A. That is what it expressly states. But you have got the—take it in that connection: If you wanted to use it for a shipment you have got to find out the routing in connection with the list of the stations.

Q. Could you use it for anything except what it expressly states?—A. Oh, yes.

Q. Well, for example, what?—A. For instance, a shipment of oil is beyond, and I am the agent at Toledo, or the representative of the Grand Trunk Railroad and the Detroit & Toledo Shore Line, at Toledo, and I am asked the rate on oil to Boston, or I am tendered a shipment of oil for Boston, or for Springfield, Massachusetts. I see here is a tariff which shows the rate to Boston——

Q. At 27 cents?—A. At 27 cents—I know that there are a number of stations in New England that take the Boston rate. I turn to a

guidebook to see what rate Springfield, Massachusetts, would take. I find that it would take the Boston rate, if it is so expressed in the book. The shipment having been tendered me, the next thing would be the routing in connection with that. I would have to
14415 ascertain the route in which I was going to send the shipment—how the guidebook indicated it was to be billed. Now, when I picked up the guidebook in this case, this National Despatch-Great Eastern Line, and look at the instructions pertaining to agents, I see that the acceptance of oil is prohibited under the tariff; so I have to lay that one aside.

Q. You have to lay the Great Eastern aside?—A. I can not accept it under that book.

Q. But you have not been asked to accept it under that book; you have been asked to accept it under this tariff, I. C. C. No. A-944.—A. The book and the tariff go together, Mr. Rosenthal; they are jointly used in the application of the rate.

Q. Yesterday you swore it did not, did you not?—A. No, I do not think so.

Q. That you did not swear to anything of that kind, yesterday?—A. Not to my knowledge.

Q. Did you not yesterday swear under oath, just as strongly as you have sworn to anything in this case——A. Mr. Rosenthal——

Q. —— that you could not take into consideration the National Despatch-Great Eastern Line in making a shipment under this tariff, because the petroleum rule in the National Despatch book excluded it? Is not that just what you testified to?—A. Mr.——

Q. No; you answer my question.—A. You have asked me whether I——

Q. You answer my question, please.—A. You asked me
14416 whether I was testifying under oath. I believe that I am. I think that the judge administered the oath in Washington, and you seem to forget that.

Q. No, I do not seem to forget it. I am not forgetting it.—A. You seem to be repeating it. Now, as to the question: I said that that tariff in connection with that Great Eastern Line guidebook did not make a rate to Boston from Toledo.

Q. Now, for the purpose of excluding the National Despatch-Great Eastern Line, you read the petroleum rule into the guidebook, do you not?—A. It is already in the book.

Q. For the purpose of excluding it?—A. It is already in it. I did not read it in that.

Q. But when it comes to any other question, why, you leave the National Despatch-Great Eastern Line in there in order to make the rate, do you not?—A. You are trying to make me state that this rate would apply from Toledo in connection with the Grand Trunk and the Central Vermont and the Boston & Maine Railroad into Boston.

Q. Yes.—A. I say that you have not shown the document yet that would indicate to me that that rate applied that way.

Q. Why doesn't it apply right under this tariff, I. C. C. No. A-944?—A. Because the book that Mr. Felton introduced in connection with that tariff expressly prohibits it.

Q. What is there in that book which excludes the Central Vermont Railroad?—A. It excludes the acceptance of the petroleum, in the first place.

Q. What is there in that book which excludes the Central
14417 Vermont Railroad?—A. It does not exclude the Central Vermont Railroad any more than it does the Boston & Maine.

Q. Is there any reference in there to the Central Vermont Railway?—A. In that book?

Q. Yes.—A. The Central Vermont is a party to the book.

Q. To which book?—A. To the National Despatch—isn't it?

Q. Very well.—A. It is my understanding that it is.

Q. Mr. Schindler, is there any possible way by which this tariff, I. C. C. No. A-944, can be used by the Detroit & Toledo Shore Line Railroad for the purpose of making a shipment over the Central Vermont Railway?—A. I say no, unless you produce some other book that grants authority to do it.

Q. So that although the Central Vermont Railway is named as a party to the tariff, and is named as one of the lines in connection with which the Detroit & Toledo Shore Line Railroad makes the tariff, you would exclude the operation of this tariff from the Central Vermont Railway, under your interpretation of it?—A. Under my interpretation of the rule contained in that book, and by reason of the fact that I knew the Central Vermont was not accepting oil on that basis.

Q. Well, suppose you did not know anything about what the Central Vermont was doing?—A. I would still be of the same opinion. But the fact that I knew of it makes it all the stronger.

Q. I see. And so, under your interpretation, the putting of the Central Vermont Railway on this tariff as a party to it resolves itself into something which is absolutely meaning-
14418 less?—A. So far as those two documents are concerned, yes, sir.

Q. Well, so far as anything is concerned?—A. No; not necessarily.

Q. Well, but so far as petroleum is concerned?—A. The Grand Trunk had other routes to Boston, no doubt.

Q. Yes, but the Central Vermont did not have, did it, in connection with the Grand Trunk?—A. The Central Vermont did not originate the business there.

Q. The Central Vermont had no other route in connection with the Grand Trunk, except the one that I have indicated, had it?—A. The Central Vermont would have received no revenue, no haul, on the business.

Q. Did the Central Vermont have any other route except the one that I have indicated?—A. Via the same route?

Q. Yes, sir.—A. Not to my knowledge.

14419 Q. So the Central Vermont Railway, named as a connecting line, and as a party to this tariff under your interpretation, is meaningless; the phraseology "For list of stations to which above rates apply see various fast freight line billing instruction" is meaningless; and the reference to the National Despatch-Great Eastern Line is meaningless?—A. No, because that clears it up.

Q. So that of all three references, the reference to the National Despatch-Great Eastern Line is the only one that has any meaning whatever?—A. When you examine the Great Eastern Line book, that removes the cloud.

Q. That is the only one, then, that has a meaning? The other two are meaningless, in your opinion?—A. In connection with the National Despatch——

Q. They are absolutely meaningless?—A. They are meaningless there, yes, sir; they don't mean anything.

Q. And that is the opinion that you stand on as an expert in this case?—A. It is.

Redirect examination by Mr. KELLOGG:

Q. If this makes a rate by way of the Central Vermont, it does by way of the Boston & Maine also, does it not?—A. Yes, sir.

Q. The Boston & Maine does not accept a prorate of any rate, do they, on oil?—A. We were so advised by the Boston & Maine Railroad, excepting to points on the old Fitchburg Railroad.

14420 Q. And the Central Vermont doesn't either?—A. The Central Vermont did not at that time, and neither did the Boston & Maine.

Q. If they accepted their arbitraries they could not ship that way, could they?—A. We were notified by the general freight agent of the road——

Mr. ROSENTHAL. I object to what you were notified by the general freight agent of the road.

14421 F. W. BOLTZ, recalled in behalf of the petitioner in rebuttal, testified as follows:

Direct examination by Mr. KELLOGG:

Q. You have been sworn in this case, have you not?—A. Yes, sir.

Q. Have you ever seen this famous tariff 944 of the Grand Trunk?—A. I have; yes, sir.

Q. I should say No. A-944.—A. Yes, sir.

Q. And the Great Eastern billing instructions?—A. Yes, sir.

Q. Did you or any concern with which you are connected ever make any shipments over that line to Boston or to New England points?—A. Not to my knowledge; no, sir.

Mr. ROSENTHAL. Hasn't he gone all over that in his examination in chief?

Mr. KELLOGG. I think not.

WITNESS. This particular question, I did not.

Mr. ROSENTHAL. He touched the question of shipments made into New England from Toledo and Cleveland. That is what you called him for in the first instance, Mr. Kellogg.

Mr. KELLOGG. I think he did. I will not ask any more questions on that.

Q. In your opinion does the tariff in connection with that billing instruction make the Boston rate to other New England towns on petroleum and its products?—A. Not according to my in-
14422 terpretation of the billing instructions.

Q. State why.—A. This clause on page 1 of the National Despatch-Great Eastern Line billing instructions No. 9 states, "Petroleum or its products, whether in tank cars or in packages, must not be taken under the instructions of this guide, but such shipments will be subject to special tariffs and local regulations of railroads interested." That clearly prohibits the application of any other rate in connection with the National Despatch-Great Eastern Line book, which is before me, according to my interpretation.

Mr. ROSENTHAL. Unless you have a special tariff.

WITNESS. Unless you have some special tariff other than this guide.

Mr. ROSENTHAL. Yes.

Q. Now, you live in Cleveland, do you?—A. Yes, sir.

Q. Do you know whether any refineries are so situated that they ship oil from a station known as Brooklyn (in or near Cleveland)?—A. There is none, to my knowledge.

Q. Where do they ship oil from the refineries at Cleveland—from what stations?—A. From Cleveland proper, and from Newburgh, Ohio, which is a suburb of Cleveland, within the corporate limits of the city.

Q. Are you familiar with the Baltimore & Ohio tariff on petroleum, I. C. C. No. 4538, and the Erie tariff, the Erie Despatch line, or whatever you call it?—A. Yes, sir; I have seen them and examined them.

Q. In your opinion, does the Baltimore & Ohio tariff in connection with the Erie Despatch make a rate from Cleveland to
14423 New England points?

Mr. ROSENTHAL. I object to that on the ground that he has not qualified as an expert or shown any competency.

Mr. KELLOGG. I think I examined him before, Mr. Rosenthal, as to his experience. I think you did, too.

Mr. ROSENTHAL. He has not qualified by showing that he is an expert in the interpretation of tariffs.

Q. You may answer, Mr. Boltz.—A. No, sir; it does not, according to my interpretation of the tariff.

Q. Why not?—A. In the first place, the Baltimore & Ohio Railroad and the Erie Railroad are competitive lines from Cleveland to the East, and it is not usual for competitive lines out of a certain point to work in conjunction with each other on business destined to competitive territory. And for that reason——

Q. Both lines reach to Cleveland, do they not?—A. Yes, sir.

Mr. ROSENTHAL. "And for that reason" what?

Mr. KELLOGG. Go ahead. Excuse me.

WITNESS. For that reason, in my judgment, there would be no arrangement made whereby the——

Mr. ROSENTHAL. I object to the witness giving a reason as to what would or would not be made. [Addressing the witness.] You are asked to tell what is, or what is not; to interpret certain tariffs; not to guess at what the roads might or might not do.

Q. Did you ever know of any shipments being made by any such route as that?

14424 Mr. ROSENTHAL. I object to that on the ground that it is immaterial.

A. No, sir.

Cross-examination by Mr. ROSENTHAL:

Q. You are still connected with the National Petroleum Association?—A. Yes, sir.

Q. In what capacity?—A. Traffic manager.

Q. And that association consists of a large number of competitors of the Standard Oil Company?—A. Yes, sir.

Mr. KELLOGG. That all appears in this record. He gave the list before.

Q. And how much work have you done in this case in assisting the Government to work it up?—A. I have testified at the hearing in Washington and here.

Q. What have you done outside of testifying?—A. Very little, except what I was obliged to do under your instructions or request.

Q. How much?—A. Simply furnished tariff reference for rates which I submitted in one of my exhibits.

Q. You furnished the Government with a great deal of information, did you not?—A. No; I think not; only what I have given in my testimony. I have not been called upon to furnish any information outside of what I have given in my testimony.

Q. You have not talked with Mr. Schindler at all?—A. I have talked with him when I have met him; yes, sir.

Q. About these various freight matters?—A. Not especially so. In a general way we have discussed the matter.

14425 Q. Have you discussed these particular tariffs with him?—A. The National Despatch tariff has been discussed; that is, it was mentioned.

Q. Was it "discussed?" You know what that means?—A. Not to any great extent; no, sir.

Q. Was it to any extent?—A. Yes; I believe Mr. Schindler——

Q. Was it discussed sufficiently for you to ascertain what his opinion was as to whether it made a rate?—A. My recollection is that Mr. Schindler asked me——

Q. Was it discussed sufficiently for you to ascertain what his opinion was?—A. After he learned what mine was; yes, sir.

Q. Well, it was discussed sufficiently for you to learn what his opinion was?—A. I knew what his opinion was; yes.

Q. Did he tell you?—A. He agreed with my interpretation.

Q. Did he tell you what his opinion was?—A. Yes; he agreed with my interpretation of the tariff.

Q. And you told him what your opinion was?—A. I did; yes, sir.

Q. When did you first talk with him about that?—A. I think it was during Mr. Felton's testimony at the time this tariff was first brought up.

Q. In your judgment, what does the reference on the first page of that tariff, I. C. C. A–944, to the Central Vermont Railroad mean? [Witness refers to the tariff.] You find there on the first page "Central Vermont Railroad," do you not?—A. Central Vermont Railroad; yes sir.

Q. Shore line in connection with Atchison, Topeka & Santa Fe, Boston & Maine, and Central Vermont? What? A. Yes, sir.

14426 Q. What does that mean?—A. To my mind that indicates that the Central Vermont Railway had concurred in some of the rates shown in the tariff.

Q. You say "in some." Which ones?—A. I am unable to state.

Q. Doesn't it indicate, Mr. Boltz, that the Central Vermont Railroad was a party to all of the rates named in that tariff, in so far as the Central Vermont might be used as a route; and, if it does not indicate that, what is there that shows that it does not?—A. According to this tariff the Central Vermont have concurred in the rates published therein to certain points which might be reached on or via their line.

Q. Is Boston one of those points? Look on the second page of the tariff.—A. Boston is shown in the tariff as taking the rate of 27 cents per 100 pounds; but that does not imply that Boston shipments might be transported over the Central Vermont Railway, for the reason——

Q. Are there any towns other than Boston, on the Central Vermont Railroad, to which oil might be shipped under that tariff from Toledo?—A. That is a difficult question for me to answer offhand, Mr. Rosenthal, without knowing more about what working arrangements the Grand Trunk and Central Vermont roads might have to this eastern territory.

Q. What has that got to do with it? The question is, is there a single point on the Central Vermont Railroad to which that petroleum tariff from Toledo applies, or over which it would apply?—A. No points here on the Central Vermont Railway to which this tariff would apply.

14427 Q. Then why was the Central Vermont made a party to the tariff?—A. I assume because perhaps they are an intermediate line.

Q. An intermediate line between what points?—A. Possibly between Montreal and New York City. This tariff quotes a rate to New York City.

Q. That is, from Toledo to New York City by way of Montreal?—A. I say it is possible that shipments might be so routed. I do not know positively, in the absence of having the divisions or knowing the working arrangements.

Q. What is the rate to New York City?—A. The rate to New York City as shown herein is 25 cents per 100 pounds.

Q. Now, all intermediate points, then, could not take a rate higher than 25 cents, could they?—A. I am not prepared to say that that is true.

Q. Look at the tariff. Look at the "intermediate" clause in the tariff, which expressly states that. I call your attention to what is known as the intermediate clause in the tariff: "Rates to intermediate stations will not exceed the rates to the next station of greater distance on the same railroad." So that no point between Montreal and New York could take a greater rate than New York, under that tariff; that is true, is it not?—A. Not necessarily; because there is a clause here which states "For list of stations to which above rates apply see various Fast Freight Line billing instructions."

Q. How does that qualify it?—A. It simply would be
14428 impossible to use this tariff to any other points than the points specifically stated herein.

Q. What points are those that are specifically stated?—A. Buffalo, Black Rock, Niagara Falls, Suspension Bridge, Salamanca, New York, Jersey City, Boston——

Q. Boston?—A. Boston.

Q. That is enough. And others?—A. And others.

Q. So that tariff can be used, and it is a specific petroleum tariff to New York and Boston, isn't it?—A. Yes, sir.

Q. Does that tariff I. C. C. No. A–944 make a 27-cent rate to Boston?—A. This authorizes a rate of 27 cents from Toledo to Boston.

Q. Is there anything in the tariff that qualifies that in any way at all?—A. Yes.

Q. What is it?—A. On the first page of the tariff it is stated that this is a joint freight tariff on petroleum products, carloads, in wood or tanks, specifying the various kinds of petroleum, from Toledo, Ohio, to points in Central Freight Association territory and Trunk Line territory.

Q. How does that qualify the Boston 27-cent rate?—A. On page 2 are shown the rates from Toledo to Trunk Line territory, the rate to Boston being shown as 27 cents per 100 pounds.

Q. My question is, is there anything in that tariff which qualifies in any way that 27-cent rate to Boston; I mean, which tends to make another or a different rate than 27 cents between Toledo and Boston?—A. No; not that I can see.

14429 Q. Now, what is there in that tariff from which you get the routing between Toledo and Boston?—A. There is noth-

ing shown in this tariff indicating the route over which shipments are to pass.

Q. Does not the language "For list of stations to which above rates apply see various Fast Freight Line billing instructions" indicate something in connection with the routing?—A. I think not to the points shown in the tariff.

Q. To your mind hasn't that phraseology any reference whatever to routing?—A. Not especially to those points shown in the tariff. To points taking that rate, it might have.

Q. Has it any reference to routing at all?—A. Yes.

Q. That particular line?—A. That particular line has no reference whatever to routing; no, sir.

Q. So, when you said "yes" a moment ago, you didn't mean——A. When I said what? I beg your pardon.

Q. You just said "yes." You don't mean that? You mean that particular line has no reference whatever to routing?—A. To the routing.

Q. That is it, exactly.—A. That is what I mean.

Q. That is just what you mean?—A. Yes, sir.

Q. What is there in the tariff I. C. C. No. A–944 that does refer to the routing of the freight from Toledo to Boston, if you please?—A. There is nothing in the tariff, as I interpret it, indicating what the routing should be from Toledo to Boston.

14430 Q. So that the agent at Toledo could route it any way, could he not, in the absence of any instructions limiting his routing—over any railroads named on the tariff, of course, I mean.—A. No; I would not like to say that, because he might have specific instructions to route business for Boston via some other line than——

Q. You don't get my question. I say, in the absence of any specific instructions to the contrary, under this tariff A–944, the agent could route it over any of the lines named on the tariff?—A. Provided he had divisions enabling him to route the business via that particular line.

Q. Certainly.—A. Percentage divisions.

Q. Provided the agent had a division with the Central Vermont Railway (one of the roads named on this tariff) he could route it via the Central Vermont Railway?—A. In the absence of any contrary instructions.

Q. This tariff I. C. C. No. A–944 you would characterize as what?—A. A special commodity tariff applying upon petroleum and its products from Cleveland, Ohio, to points shown therein.

14431 Mr. ROSENTHAL. It is agreed between counsel that Mr. Tilford's testimony may be corrected as follows, to wit:

In the third answer from the bottom of page 176 of the printed record, the quantity of crude oil (1,074,000 barrels) stated as sold during the first half of 1907, included oil sold to refiners other than

those mentioned in the Government's petition. The sales to the latter during the six months named amounted to 825,845 barrels. The sales to others amounted to 249,105 barrels, of which a total of 246,810 barrels was sold to the Pennsylvania Paraffine Works, S. M. Willock, Freedom Oil Works, Petrolia Refining Company, and W. H. Daugherty & Son, and 2,295 barrels to unnamed miscellaneous parties.

Mr. KELLOGG. It is agreed between counsel that the original certified copies of petitioner's Exhibits 1002, 1003, and 1004 may be returned to the parties producing them, and copies thereof substituted for the record.

It is admitted for the purposes of this case, and not to be used in any other case of proceeding, that for at least five years prior to July, 1905, the course of business with respect to shipments of petroleum and its products which were made by the Standard Oil Company from Whiting, Ind., to East St. Louis, Ill., or St. Louis, Mo., over the Chicago & Alton Railroad, was as follows: The employees of the Standard Oil Company at Whiting, Ind., prepared shipping
14432 orders, each covering one or more cars, addressed to the Chicago Terminal Transfer Railroad Company at Whiting, in substantially one or the other of the forms following:

Form B 266. 10-6-03—50M.

SHIPPING ORDER.

Delivered to Chicago Terminal Transfer Railroad Co., Whiting, Ind., 1/24, 1905. By Standard Oil Co., in apparent good order, the articles named below, to be delivered in like good order, without unnecessary delay.

W. P. & Co.

At E. St. Louis, Ill.

D 31134

Via C. & A.
Freight prepaid to dest.
Owner's risk as per conditions of company's bill of lading.

[Printed by The Limited Autographic Register Co., 312-314 Fifth avenue, Chicago Ill.]

Car.		Description.	Weight. (Subject to correction.)
Initial.	No.		
U. T. L.			
	1824	Ref. oil y	1559 y
	8884	y	1560 y
	7909	y	1561 y
	7861	y	1562 y
	1221	y	1563 y
	3106	y	1564 y
	5494	y	1565 y
	7595	y	1566 y

(Signed) STANDARD OIL CO.
Per ——— ———

4433 Form B 149A. 35M. 6-11-02.

Delivered to the Chicago Terminal Transfer R. R. Co. by Standard Oil Co. the following-described property, in apparent good order, to be forwarded as consigned below, subject to "Rules regulating transportation:"

WHITING, IND., STATION, MAR. 29, 1904.

Marks and consignee.	Description of property. U. T. L. tank cars (Gas / Oil.)	Weight. (Subject to correction.)
La Clede Gas Lt. Co., sta. Main & Howard streets. St. Louis, Mo. Freight prepaid to " " " " " " Via C. & A. c/o W. F. Co.	8080	1629

Marked and described as above (contents and value otherwise unknown) for transportation by the Chicago Terminal Transfer R. R. Co. to ——— Station on ——— Railway.

(Fill the last blank with the name of the proper station on the line of this road; in no case with the name of any place off the road.)

Freight consigned to any place where this company or connecting lines has no agent is to be considered as delivered to the consignee when unloaded without further notice, and will be thereafter wholly at owner's risk.

Property consigned to any place off the company's line of road, or to any point beyond its termini, will be sent forward by a carrier, when there is such, in the usual manner, the company acting, 14434 for the purpose of delivery to such carrier, as the agents of the consignor or consignee and not as carriers. The company will not be responsible for any loss or damage to the property after the same shall have been sent from any warehouse or station of the company.

Signed, STANDARD OIL CO.,

Owner's risk of leakage. By ——— ———.

That the Standard Oil Company delivered said shipping orders to the agent of the said Chicago Terminal Transfer Railroad Company at Whiting;

That at the same time and with the same writing by which said shipping orders were made two additional copies of the written portion thereof were, by the use of carbon paper, likewise made; that one of said impressions or copies was upon a blank which, instead of the words "Delivered by the Standard Oil Company to the Chicago Terminal Transfer Railroad Company," read "Received from the Standard Oil Company by the Chicago Terminal Transfer Railroad Company;" that said last-mentioned copy, with the receipt of the said agent at Whiting signed thereto or stamped thereon, was

returned by said railroad company to the Standard Oil Company, the original shipping order remaining in the possession of the railroad company;

That from such shipping order the Chicago Terminal Transfer Railroad Company prepared waybills covering the transportation of the cars from Whiting, Ind., to Chappell, Ill., said waybills showing the consignee and the final destination at East St. Louis or St. Louis;

14435 That the agent of the Chicago & Alton Railroad at Chappell, Ill., prepared waybills covering the transportation of the cars from Chappell to East St. Louis or St. Louis, taking the information for the preparation of such waybills (regarding car numbers, consignor, consignee, routing, destination, and shipping directions) from the said waybills of the said Chicago Terminal Transfer Railroad Company; and that such waybills of the Chicago & Alton Railroad were substantially in the form of petitioner's Exhibit 562 or 563;

And that the Chicago & Alton Railroad received no shipping order or other instructions directly from the Standard Oil Company, and issued no bill of lading or receipt to that company for said cars.

It is further admitted, for the purpose of this case and not to be used in any other case or proceeding, that the course of business with respect to shipments of oil by the Standard Oil Company from Whiting, Ind., to East St. Louis, Ill., and St. Louis, Mo., via the Chicago, Burlington & Quincy Railroad was substantially similar to the course of business with respect to shipments between said points over the Chicago & Alton Railroad above described, with the exception that the cars were delivered by the Chicago Terminal Transfer Railroad Company to the Chicago, Burlington & Quincy Railroad at the Chicago station of the latter road, and except that the waybills of the said Chicago, Burlington & Quincy Railroad were substantially in the form of petitioner's Exhibit 575.

14436 It is further admitted, for the purposes of this case and not to be used in any other case or proceeding, that the course of business with respect to shipments of oil by the Standard Oil Company from Whiting, Indiana, to East St. Louis, Ill., and St. Louis, Mo., over the Chicago & Eastern Illinois Railroad was substantially similar to the course of business above described with respect to shipments of oil over the Chicago & Alton Railroad, except that the cars were delivered to the said Chicago & Eastern Illinois Railroad by the said Chicago Terminal Transfer Railroad at Dolton, Ill., and except that the waybills of the said Chicago & Eastern Illinois Railroad were substantially in the form of petitioner's Exhibit 582½, and that on shipments made from Whiting over the Elgin, Joliet & Eastern Railroad, and delivered by it to the Chicago & Eastern Illinois Railroad at Chicago Heights, Ill., for transportation to East St. Louis and St. Louis, the course of business was substantially similar to that above described.

That the charges of the said Chicago Terminal Transfer Railroad or Elgin, Joliet & Eastern Railroad for the transportation or switching of said cars from Whiting to the above-mentioned connections with the Chicago & Alton Railroad, the Chicago, Burlington & Quincy Railroad, and the Chicago & Eastern Illinois Railroad, respectively, were paid by said last-named railroads out of their rates of 6 or 6¼ cents from Whiting to East St. Louis.

14437 It is further admitted for the purposes of this case and not to be used in any other case or proceeding, that for at least eight years prior to November, 1905, the Standard Oil Company made shipments of oil from Whiting, Ind., by way of the Chicago Terminal Transfer Railroad, the Chicago & Eastern Illinois Railroad, and the Evansville & Terre Haute Railroad, to Evansville, Ind., said shipments being destined to points south of Evansville in other States, to which points no through oil rates were published or in force from Whiting or Chicago, among others to the points named in petitioner's Exhibit 531, on which shipments the rate of freight actually paid between Whiting and Evansville was either 8¼ or 6 cents per hundred pounds;

That the course of business with respect to the shipping of such oil was as follows: That the employes of the Standard Oil Company at Whiting prepared shipping orders addressed to the Chicago Terminal Transfer Railroad in substantially the following form:

14438 Form B 266—10-6-03—50 M.

SHIPPING ORDER.

Delivered to CHICAGO TERMINAL TRANSFER RAILROAD CO.
WHITING, IND., 12-16, 1904.

By STANDARD OIL CO.

In apparent good order, the articles named below, to be delivered in like good order, without unnecessary delay.

To Standard Oil Co., Henderson, Ky.

At ———

D 27865

Via C. & E. I., E. & T. H., L. & N.

Freight prepaid to Evansville. ~~To follow~~

Owner's risk, as per conditions of company's bill of lading.

[Printed by The Limited Autographic Register Co., 312-314 Fifth avenue, Chicago Ill.]

Car.		Description.	Weight. (Subject to correction.)
Initial.	No.		
U.T.L.	7088	Ref. oil. (1094)	

(Signed) STANDARD OIL CO.,
Per ——— ———.

14439 That said shipping orders were delivered to the agent of the Chicago Terminal Transfer Railroad at Whiting; that said shipping orders showed in each case the consignee and the final destination in some State south of Evansville, as aforesaid; that, at the time of the writing and making of said shipping orders, two additional copies of the written portion thereof were made by the use of carbon paper; that one of said impressions or copies was upon a blank which, instead of the words "Delivered by the Standard Oil Company to the Chicago Terminal Transfer Railroad Company," read "Received from the Standard Oil Company by the Chicago Terminal Transfer Railroad Company;" that said last-mentioned copy, with the receipt of said agent at Whiting signed thereto or stamped thereon, was returned by the railroad company to the Standard Oil Company;

That the said Chicago Terminal Transfer Railroad Company, from said shipping orders, prepared waybills covering the transportation of the oil from Whiting, Ind., to Dolton, Ill., where it was turned over to the Chicago & Eastern Illinois Railroad, and that said waybills showed the consignee and final destination as indicated on said shipping orders;

That the agent of the Chicago & Eastern Illinois Railroad at Dolton prepared waybills covering the transportation of said oil from Dolton to Evansville, Ind., which waybills were substantially in the form of petitioner's Exhibit 529, showing the final destination at some point south of Evansville in other States; and that the information as to the car numbers, consignor, consignee, final
14440 destination, routing and shipping directions entered by the said agent of the Chicago & Eastern Illinois Railroad on said waybills was taken from the waybills of the Chicago Terminal Transfer Railroad;

That the Evansville agents of the railroads extending south from Evansville to points in other States, prepared waybills covering the transportation of said oil from Evansville to final destination, and that the information as to car numbers, consignor, consignee, final destination, routing and shipping directions entered by said agents on said waybills was taken from the waybills of the Chicago & Eastern Illinois Railroad above described;

That no shipping order or other instructions for the transportation of said cars of oil were given by the Standard Oil Company directly to said Chicago & Eastern Illinois Railroad, or to the said railroads extending from Evansville to the points of final destination;

And that the charges of said Chicago Terminal Transfer Railroad for the transportation of said oil from Whiting, Ind., to Dolton, Ill., were paid by the said Chicago & Eastern Illinois Railroad out of the said rate of 6 cents or 8¼ cents per hundred pounds from Whiting to Evansville.

In connection with the offering in evidence on the part of the defendants of the Mississippi Valley through freight tariff number 7, being I. C. C. Advice B–59 (Rec. 13298), which was objected to by counsel for the Government because the tariff provides that

14441 the rates shown would not necessarily prevail via all lines, but that the rates, with the exceptions noted, are in accordance with the division sheets of the individual lines; and in regard to defendants' Exhibit 343–A to T, inclusive, it is agreed by counsel for the respective parties hereto, that the said Mississippi Valley through freight tariff number 7 and the said defendants' Exhibit 343–A to T, inclusive, need not be copied into the record; and it is further agreed that there were in effect percentages or agreed divisions for the handling of traffic in connection with the said Mississippi Valley through freight tariff number 7, over the Chicago & Alton Railroad and its connections via East St. Louis and over the Chicago & Eastern Illinois Railroad and its connections via Evansville, and that the said tariff in connection with such percentage sheets named a rate via each of such routes, upon petroleum and its products in carloads from Chicago to Mobile, Alabama, of 23¢ per hundred pounds.

In connection with defendants' Exhibit 344 it is agreed that that exhibit need not be copied into the record, and that such exhibit shows that there were in effect percentages or divisions of rates for the handling of traffic from Chicago to Evansville, Ind., over the Chicago, Burlington & Quincy Railroad and the Southern Railway via East St. Louis.

14442 J. S. FORD, called as a witness in behalf of petitioner in rebuttal, having been duly sworn, testified as follows:

Examined by Mr. KELLOGG:

Q. Mr. Ford, what position do you occupy with the Chicago & Eastern Illinois?—A. Auditor.

Q. How long have you been?—A. Since May, 1903.

Q. Did you make search for the documents called for in this subpœna, petitioner's Exhibit 1040?—A. I did. I had search made.

Q. Did you find any back of 1900?—A. I could find nothing. The papers had all been destroyed.

Q. If they are in existence they would be in your office and in your custody?—A. They would be under my control.

Q. Do you know that papers during that period generally were destroyed?—A. They were.

Q. So that these probably were destroyed with them?—A. They were destroyed for want of room for storage.

Mr. KELLOGG. I offer in evidence petitioner's Exhibit 1040.

(An adjournment was here taken until the morning of Friday, January 22, 1909, at 10.30 o'clock.)

14443 ROOM 627 FEDERAL BUILDING, CHICAGO, ILL.,
Friday, January 22, 1909—10.30 a. m.

The hearing was resumed before the special examiner, Hon. Franklin Ferriss, at the above time and place.

Present: On behalf of the petitioner, Mr. Frank B. Kellogg, Mr. Charles B. Morrison. On behalf of the defendants, Mr. Moritz

Rosenthal, Mr. John S. Miller, Mr. Chauncey W. Martyn, Mr. F. L. Crawford.

It is stipulated, for the purposes of this case only, that if J. H. Howard was called as a witness he would testify as follows, and the same is admitted as if he was so called and sworn and did so testify, subject to the objections that the testimony is immaterial and re inter alios:

For about five years prior to March, 1907, I was the chief clerk freight accounts of the Chicago & Alton Railroad in the office of the auditor. Throughout said time up to June, 1905, I handled the statements of billing and the bills rendered to the Standard Oil Company, in connection with the transportation of oil from Whiting Ind., to East St. Louis, Ill., and St. Louis, Mo., which reached the tracks of the Chicago & Alton Railroad at Chappell, Ill. The rail road agent at Chappell sent to the railroad auditor's office, usually twice each month, a statement called a statement of billing, showing the waybill numbers, the car numbers, and the weights of the several shipments made by the Standard Oil Company from Whiting
14444 via Chappell to East St. Louis. I checked these statements of billing with the original waybills made by the agent at Chappell, which came back from East St. Louis. These original way bills showed a rate of either 10 cents or 18 cents per hundred pounds between Whiting and East St. Louis, with an additional charge of 1½ cents per hundred pounds on shipments going to St. Louis, Mo. From these statements of billing I computed the total weight, and made a bill against the Standard Oil Company for the amount of freight charges thereon at the rate of 6 cents per hundred pounds on shipments from Whiting to East St. Louis, and at the rate of 7½ cents plus 1½ cents bridge or ferry charges on shipments destined to St. Louis. I made an impression copy of this bill, and also an im pression copy of the statement of billing furnished to me by the agent at Chappell, and then sent both originals to the Standard Oil Company. The bill sent to the Standard Oil Company came back to me with a remittance, which I turned over to the treasurer of the railroad. I kept an account in the regular course of business showing these transactions, in a book marked on the back "Ledger Unpaid coupons. C. & A. R. R. Auditor." I entered in this book on the left-hand side of the page an amount of money representing the charges on the weight of the oil shipped at the rates shown in the waybills, namely, 10 cents or 18 cents per hundred pounds on shipments from Whiting to East St. Louis, and 11½ cents or 19½ cents on shipments from Whiting to St. Louis. I entered on the right-hand side of the page the amount of said bills rendered by me to
14445 the Standard Oil Company, being the amount of the freight charges on such shipments, computed at the rate of 6 cents per hundred pounds on shipments from Whiting to East St. Louis, and at the rate of 7½ cents per hundred pounds on ship ments from Whiting to St. Louis; and I entered the difference be tween the amounts on the left-hand side and the amounts on the

right-hand side in a column in the middle of the page, as an overcharge.

The difference between the amounts of the waybills and the bills sent to the Standard Oil Company was also shown on a separate statement under the head "Overcharge and undercharge."

All of the said accounts kept in the book marked "Unpaid coupons" were similar in form, and the following is a copy of one of such accounts, appearing on page 49 of said book, headed "Chappell, Standard Oil Audit Account, June, 1904:"

June	15	Audit.	134	1,135.34				✓2,207.82
			135	1,849.79				
			136	1,216.33				
			138	1,810.66				
			139	34.65				
			140	202.86				
				6,349.63			4,141.81	2,207.82
June	30	Audit.	232	251.25				✓2,092.83
			233	780.39				
			234	76.55				
			235	2,764.43				
			236	1,968.83				
				5,811.45			3,718.62	2,092.83
		6846						✓344.33
			137	344.33				✓1,203.32
			237	1,203.32				
				1,547.65			7,860.43	1,547.65
				13,708.73	✓			5,848.30

14446 The local agent of the Chicago & Alton Railroad at Chappell in his accounts charged himself, and in the general accounts of the railroad in the auditor's office was charged with, the amount of the freight charges on such shipments of oil from Whiting to East St. Louis and St. Louis at the said rates of 10 cents or 11½ cents, respectively, or at the said rates of 18 cents or 19½ cents, respectively; and that the agent at Chappell prepared and sent to the auditor's office a waybill showing the said amount so computed, as advance charges, which amount was thereupon credited to his account, and charged to the auditor's office, and the adjustment of this amount in the auditor's office was then shown in the said book marked "Unpaid Coupons."

It is admitted that the impression copies of the statements of billing and of the bills rendered to the Standard Oil Company referred to in the said testimony of J. H. Howard are the same impression copies which have been heretofore testified to by E. D. Durand.

Said books and accounts so kept by me as herein described were books and accounts kept by the Chicago & Alton Railway, and the entries therein made by me were bookkeeping entries made for railroad purposes simply.

14447 E. D. DURAND, recalled for further direct examination, testified as follows:

By Mr. KELLOGG:

Q. Mr. Durand, have you figured the distance by the rail routes, and what routes, from Whiting, Indiana, to East St. Louis, and East St. Louis to Evansville?—A. I have.

Q. State the routes and the distance.—A. The distance from Chicago—not from Whiting, but it is practically the same from Whiting—to Evansville, Indiana, by way of the Chicago, Burlington & Quincy from Chicago to East St. Louis, and the Southern Railway from East St. Louis to Evansville, is 588 miles; namely, 345 miles to East St. Louis and 243 miles from East St. Louis to Evansville. The distance from Chicago to Evansville, by way of East St. Louis, over the tracks of the Chicago & Alton Railroad between Chicago and East St. Louis, and the Southern Railway between East St. Louis and Evansville, is 524 miles; being 281 miles from Chicago to East St. Louis and 243 miles from East St. Louis to Evansville.

Q. Mr. Reilly, the general freight agent of the C. & E. I. Railroad, testified that he was unable to find a certain memorandum in file No. 6899. Did you see the original memorandum in that file and make a copy of it and compare it yourself?—A. I did. I saw it in the latter part of 1905 or the early part of 1906 and made a copy of it.

Mr. ROSENTHAL. What was the question?

Mr. KELLOGG. I asked him if he saw the original and made

14448 a copy of it and compared it himself.

Mr. ROSENTHAL. I object to that upon the ground that there is not any evidence that the witness knows whether what he saw was an original or not.

WITNESS. I saw such a paper in the——

Mr. KELLOGG. Then, you describe what you saw, Mr. Durand.

WITNESS. It was in file 6899 in the general freight office of the Chicago & Eastern Illinois Railroad, and I saw it in that office here in the city of Chicago. I made a copy of it, which I compared with the original, and afterwards reproduced in this book. I have not the copy that I made here. I have it in Washington.

Mr. KELLOGG. You have no objection to that being given to the stenographer and copied in?

Mr. ROSENTHAL. No; I have no objection to Mr. Durand using the copy in the petroleum report there in lieu of the original copy which he made.

Q. Is this a correct copy of the paper that you saw in that file [exhibiting page of book to the witness]?—A. It is; appearing on the bottom of page 272 of this report on "Transportation of Petroleum."

Mr. KELLOGG. I offer it in evidence.

Mr. ROSENTHAL. I object to it upon the ground that it is immaterial, incompetent, and res inter alios, and not properly proven.

The copy of the paper above referred to is as follows:

14449 "H. H. R.:

"I have just seen Mr. Markham, of the Illinois Central, in company with Mr. McClintock, and through billing arrangements from Dolton to Grand Junction can be arranged on the oil, taking effect to-morrow, March 1st. The E. & T. H. has wired that the arrangement is satisfactory to it, and Mr. Markham says it will be entirely satisfactory to the Ill. Central. He has the matter up with Mr. Hurlbut and Mr. Fairman. Will you therefore please make arrangements for the proper instructions to agent at Dolton at once."

"WM. C. 2/28/98."

Mr. KELLOGG. I think that is all. You wanted to ask Mr. Durand about some matters to which he testified in New York?

Mr. ROSENTHAL. Yes.

Cross-examination by Mr. ROSENTHAL:

Q. Mr. Durand, in offering your Exhibit 979—the relative prices of commodities according to Dun's Index Number from 1870 to 1906, and according to the Bureau of Labor from 1890 to 1906—you stated that Dun's Index Numbers were generally recognized and accepted by economists as authority.—A. As authoritative? Yes; in a general way. No one pretends that any Index Number is altogether a correct representation of the movement of prices, and I would not say that Dun's Index Number was considered as authoritative as the Bureau of Labor's Index Number; but it is

14450 considered, in a general way, as showing the trend of prices approximately, or with approximate correctness.

Q. In that exhibit you give Dun's Index Numbers from 1870 to 1878 among others. You fail to indicate, however, upon your exhibit whether those Index Numbers are based upon paper money prices or not. What is your information upon that?—A. Without seeing the paper from which that was taken, I can not say positively. My impression is that it is based upon paper money prices.

Q. Do you not know, as a matter of fact, that the Index Numbers from 1870 to 1878 in Dun's reports are based upon paper money prices?—A. I do not know it as a matter of fact. I think it possible. Quite likely that is true.

Mr. KELLOGG. Let me suggest. Is there a way you can find out?

Mr. ROSENTHAL. There is not any doubt about it.

WITNESS. In giving quotations of prices during that period of time, when paper money was at a discount, it was not the custom in ordinary quotations of prices to make that correction, and I presume it has not been done; and I am not sure whether it is stated in the report from which that is taken whether it has been done or not; so I can not state positively whether they have done it or not. If it is stated there I can make my testimony more accurate. I do not know.

Q. I call your attention to the following work, to wit: "Wholesale prices of wages and transportation. Senate Report No. 1394,

14451 Finance Committee, second session Fifty-second Congress, Part 1," being a report by Mr. Aldrich from the Senate Committee on Finance, commonly known as the "Aldrich report," and published as a Government document by the Government Printing Office. You are familiar with that, are you not?—A. Entirely so.

Q. Will you please examine the Index Numbers shown on pages 93 and 99 of that report for the years 1870 to 1878, and then examine the Index Numbers as shown on your Exhibit 979, and let us know then whether you can not testify positively that the Index Numbers from 1870 to 1878 in your Exhibit 979 are based upon paper money prices?—A. I would answer that, that the logical conclusion would apparently be that the Dun's Index Number prices are not gold prices, but currency prices. Of course, I can not say that with absolute certainty.

Q. Paper money prices?—A. Paper money prices.

(Paper marked "Defendants' Exhibit 399.")

Q. Will you turn to page 99 of the Aldrich report? I show you defendants' Exhibit 399, being a copy of the figures taken from the Aldrich report as printed on page 99 of that report. Will you please examine it sufficiently, so as to be able to testify that our Exhibit 399 is correctly copied from the Aldrich report?

Mr. KELLOGG. It may be taken so, unless we point out some corrections hereafter.

Mr. ROSENTHAL. Very well. I offer defendants' Exhibit 399 in evidence.

14452 Mr. KELLOGG. It is objected to as not proper cross-examination.

Q. Mr. Durand, it is hardly a fair statistical comparison to compare paper money prices of one period with gold prices of another period, without pointing out that fact, is it not?—A. No, sir.

Q. That is what you do in your petitioner's Exhibit 979, is it not?—A. The prices of oil in the early period were quoted in paper money, in the same way. If any one had occasion to refer to the decline in the prices of oil, he would use the same class of statistics.

Q. In your Exhibit 979, for those years 1870 to 1878, you use paper money prices?—A. I used the prices as they appeared in Dun's Index Table which I am citing. I did not undertake to convert them to gold prices. I would add that the paper money prices during that time were the prices with which every one was familiar; that a gold price was simply a conversion—a result which is obtained by computation. But it is true that to compare the price of a later period with the price of an earlier period it is perfectly proper to take account of the inflation of the paper money at that early time and reduce them both to gold basis.

14453 (Paper marked "Defendants' Exhibit 400.")

Q. Mr. Durand, on your direct examination you selected certain commodities from the report of the United States Bureau of Labor, March, 1908, No. 75, and instituted a comparison between

the prices of those commodities and petroleum, comparing the prices for the period 1903 to 1906, inclusive, with the period 1895 to 1898, inclusive. You remember such an exhibit, do you not?—A. I introduced or offered two exhibits of that character. I do not know which one you refer to.

Q. I show you defendants' Exhibit 400, where we institute a similar comparison between something like 60 different commodities taken from the same report, and petroleum, for the same periods. Will you please examine defendants' Exhibit 400, comparing the same so far as petroleum prices are concerned with defendants' Exhibit 293–B, and comparing the exhibit, so far as the prices of other commodities are concerned, with the report of the United States Bureau of Labor, of March, 1908, No. 75, and tell me whether or not the figures upon defendants' Exhibit 400 are correctly stated—the prices?

Mr. KELLOGG. I suggest, to obviate the necessity of taking time to check those up now, that the reports from which they were taken be considered authentic, for what they are worth, and that either party produce from those reports these statements at the hearing, with the same force and effect as though they were put in here as testimony. He hasn't time now to check this over.

Mr. ROSENTHAL. There isn't any doubt about its correctness. It won't take him but a few minutes.

Mr. KELLOGG. Are you willing to do that?

14454 Mr. ROSENTHAL. I want to put this in as an exhibit on our part, and I want it in the record. I have not the slightest objection to Mr. Durand taking as much time as he likes to check it up for the purpose of determining whether it is correct, with the understanding that if he finds any inaccuracies in it hereafter the exhibit will either be corrected or that you may use the report itself on the hearing for the purpose of making such correction.

Mr. KELLOGG. Is there any objection to the report being used, anyhow?

Mr. ROSENTHAL. I do not know enough about the report as a whole to say. I have only known the report in so far as these particular prices are concerned.

Mr. KELLOGG. Then, we must take time to check it up. And I ask him to at the same time take all the commodities and show the same thing.

WITNESS. Even with such clerical assistance as I have here in Chicago it would take at least a day to figure up all of these commodities, because it is not simply a matter of comparison of one year with another, but of adding up the quotations for four years at the beginning and dividing by 4, and of four years at the end and dividing by 4, and there is a very large amount of computation involved in this table. Presumably it is correctly computed, but I have no way of knowing it.

Mr. ROSENTHAL. If Government counsel will admit this in evidence now, subject to Mr. Durand's right to correct, I do not press the

witness to check it up to-day or to-morrow. But I must insist upon its going in.

14455 Mr. KELLOGG. I want to object to it as not proper cross-examination or sur-rebuttal testimony. Yet I am willing that this should go in now, subject to Mr. Durand's right to check it up afterward and, if he finds any errors, that he may correct them by a statement without all of us getting together and having another meeting.

Mr. ROSENTHAL. If he finds what he believes to be errors and will notify me, I have not the slightest doubt that we will be able to agree.

Mr. KELLOGG. Provided that if he finds errors he may put in a statement correcting them, and that he may take all the balance of the articles shown in the same table and produce a table in the same manner and put it in the same as though he testified to it—submitting them to you in the same way.

Mr. ROSENTHAL. I cannot agree to the last, Mr. Kellogg, because that is a blind agreement.

Mr. KELLOGG. You know what the articles are.

Mr. ROSENTHAL. Oh, no.

Mr. KELLOGG. The professor here can tell you in a minute. They are well selected articles there, named in the report, aren't they, Mr. Durand?

WITNESS. All the articles on which prices are given are of course named in the report, and the price of each article is given separately for each year, also the index number for each article separately for each year. It is from those prices as so reported that the exhibits that I introduced or offered have been computed, and I assume that the defendants' exhibit has been computed from the same

14456 prices.

Mr. CRAWFORD. It is so stated at the bottom, Mr. Durand.

Mr. ROSENTHAL. All I ask Mr. Durand to do is to check up defendants' Exhibit 400, with the authorities thereon stated, for the purpose of determining whether or not the figures thereon stated are not correct. He either must do that or you must agree to let it go in, subject to his right hereafter to check it up.

Mr. KELLOGG. I don't think so. In the first place, Mr. Rosenthal, this is entirely new matter. You could have put this in in your case, and then we could have had a chance to reply to it.

Mr. ROSENTHAL. It is not new matter at all. It is cross-examination of a statement made up upon this same scheme, or in accordance with this same scheme, by Mr. Durand. It is direct cross-examination of a subject-matter to which he testified on the direct.

Mr. KELLOGG. Well, I shall object to his doing that, unless he is permitted to put in the entire table showing the whole thing.

Mr. ROSENTHAL. You will object to his doing what?

Mr. KELLOGG. Checking this up and testifying to it.

Mr. ROSENTHAL. All right.

Q. Mr. Durand, I hand you the Bulletin of the United States Bureau of Labor for March, 1908; No. 75, is it not?

Mr. KELLOGG. I will ask the court to adjourn until next week, and I will get the rest and put them in, unless you put in complete tables.

14457 Mr. ROSENTHAL. I will not agree now to let him put in something that I have not any right to cross-examine him upon.

Mr. KELLOGG. Then I will ask to have another hearing; I will ask the examiner to adjourn to Washington to take the testimony there.

(The question was read.)

A. This is a copy of that report.

Q. That is the same report that you used in making up your two exhibits that you spoke of a few moments ago, comparing prices for the years 1895 to 1898, inclusive, with the years 1903 to 1906, inclusive, is it not?—A. It is.

Q. One of those exhibits is Government Exhibit 980, is it not?—A. It is. Government Exhibit 980 is the one that I have marked here that covers the same commodities as defendants' Exhibit 297.

Q. And the other is Government Exhibit 982?—A. That is one of the others; yes. There are two others.

Q. And the other is Government Exhibit 983?—A. Yes, sir.

Q. Each of those exhibits institutes a comparison of prices of commodities therein named, by four-year periods—that is, from 1895 to 1898, inclusive, as one period, compared with the period from 1903 to 1906, inclusive?—A. That is correct.

Q. I show you defendants' Exhibit 400, which exhibit is prepared in accordance with the same scheme as Government Exhibits 980, 982, and 983, the commodities named in defendants' Exhibit 400 being taken from the same authority, to wit, the Report of the Bureau of Labor, No. 75, of March, 1908; and I also show you the Report

14458 of the Bureau of Labor. Will you please examine defendants' Exhibit 400 and take the second commodity thereon named, to wit, barley, and turn to page 427 of the Report of the Bureau of Labor and tell me what the price of barley was for the year 1895, as shown by that report?—A. Do you wish the price itself or the relative price?

Q. The relative price.—A. 94.8.

Q. What was it for the year 1906?

Mr. KELLOGG. Just wait a moment. I will introduce the entire table.

Mr. ROSENTHAL. I can not stop you from introducing it.

Mr. KELLOGG. Very well. Then there is no use of examining on it. It shows, doesn't it? Of course, if you want to stay here a week, I am perfectly willing to put in the testimony.

Mr. ROSENTHAL. I want to stay here a week unless you will either admit the correctness of defendants' Exhibit 400 or have Mr. Durand check it up at his leisure.

Mr. KELLOGG. You want me to admit the correctness of this, and not put in anything else; and I won't do it.

Mr. ROSENTHAL. I have not the slightest objection to your putting in anything else that you want to, but I am not going to agree to your putting in anything else. It is up to you to put it in. I cannot stop you from putting it in.

Mr. KELLOGG. I offer the entire tables in evidence.

Mr. ROSENTHAL. I can not stop you, as you well know, from putting in anything you want here.

Mr. KELLOGG. You can be reasonable about it.

Mr. ROSENTHAL. I am entirely reasonable about it.

Mr. KELLOGG. No; you are not.

14459 Mr. ROSENTHAL. That was not your suggestion here before at all.

Mr. KELLOGG. Yes, it was.

Mr. ROSENTHAL. No, it was not.

Mr. KELLOGG. I will put in the entire tables.

Mr. ROSENTHAL. Now what do you say as to defendants' Exhibit 400 going in as correct, subject to Mr. Durand's right to rectify any errors?

Mr. KELLOGG. Mr. Durand, does the correctness or incorrectness of this table appear from the tables in the Government's report?

Mr. ROSENTHAL. There is some computation necessary.

Mr. KELLOGG. Can't they be made right from that?

WITNESS. It is a matter of very simple mathematics to compute it from the table here called Table 4.

Mr. KELLOGG. If those tables are in evidence, they show whether this is correct or not, do they not?

WITNESS. I should say so. That is a matter of computation.

Q. That is, if the tables of the report of the Bureau of Labor are in evidence as a whole, they will show whether the prices stated on defendants' Exhibit 400 are correctly stated?—A. They will.

Q. But they will not show the computations?

Mr. KELLOGG. But that shows for itself.

WITNESS. They will not themselves show the computations, but that is a matter of deduction; a matter of mathematics.

14460 Mr. KELLOGG. That does not require testimony does it?

Mr. ROSENTHAL. Certainly.

Mr. KELLOGG. Why?

Mr. ROSENTHAL. I don't know of any way of getting in an exhibit which contains a computation, without having somebody testify to the correctness of the computation. I know of no principle of evidence that permits counsel to put in a mere computation by simply throwing it into the record without any testimony as to its correctness. All I ask the witness to do, in view of the fact that you have put in the entire table now, is to check up defendants' Exhibit 400 for the purpose, first, of ascertaining whether or not the prices thereon stated have been correctly and accurately taken from this report of the Bureau of Labor, and secondly, whether the computations thereon made are correctly and accurately made.

Mr. KELLOGG. If I do that, why should you require us all to meet again for him to simply show that he makes correct computations as to the balance of the articles, when the tables are in evidence?

Mr. ROSENTHAL. Because, Mr. Kellogg, I do not know what Mr. Durand's scheme of making up such an exhibit will be. I don't know but I may wish to ask him certain questions concerning such an exhibit, when he offers it; and I can not agree now that you may put in through Mr. Durand such an exhibit without my having any opportunity to cross-examine him upon it.

14461 Mr. KELLOGG. It would be exactly like this. It is a mere matter of computation.

Mr. ROSENTHAL. If it is exactly like this, it is a mere matter of computation and all of the data would be in. Then Mr. Durand can make up a computation and you can embody it as a part of your brief; you have got all the evidence in and you don't need to offer it as an exhibit.

Mr. KELLOGG. Take your own course. I object to the table. I am perfectly willing to put this in, if you will let us put in one just like it.

Mr. ROSENTHAL. It is not a question of willingness at all.

Mr. KELLOGG. Yes, it is.

Mr. ROSENTHAL. It is a question of right, on our part.

Mr. KELLOGG. I object to it.

Q. I shall have to ask you, then, in view of the objection, to check these figures up, either on the witness stand or off the witness stand, as you please.

Mr. KELLOGG. You can ask him as to each item. I am perfectly willing to concede its correctness, subject to correction, if you will do the same with us.

Mr. ROSENTHAL. What do you mean by our doing the same with you?

Mr. KELLOGG. Let Mr. Durand produce a table of the rest of the articles from the same tables these were taken from and give it to you just as soon as it can be done; and if there are any corrections to be made in it, you make them the same as we would make in yours, exactly.

Mr. ROSENTHAL. I may wish to cross-examine him concerning them.

14462 Mr. KELLOGG. I don't know what questions you could ask about a table.

Mr. ROSENTHAL. I don't either until I see it.

Mr. KELLOGG. Very well. Take your own course, if you won't agree to it.

Q. The percentage of increase in 1906 over 1905, for barley, was how much?—A. There was a decrease.

Q. The percentage of increase for 1906 over 1895, in the price of barley, was how many points?—A. The number of points difference between the index number of 1895 and the index number of 1906 is

18 points. The percentage of increase would be somewhat greater than that.

Q. 18.9, is it not—the percentage of increase?—A. I do not so compute it. The actual difference in number of points between 94.8 (the relative price in 1895) and 112.8 (the relative price in 1906) is 18 points. Dividing that by 94.8 would give the percentage of increase. I can not figure it without a piece of paper.

Mr. KELLOGG. Let me ask a question or two. I think I can clear this up.

By Mr. KELLOGG:

Q. Does the correctness or incorrectness of Table 400 appear from Table 4 of the Bulletin of the Bureau of Labor of March, 1908?—A. It does.

Q. Every figure in it?—A. Every figure in it can be verified with certainty from that table.

14463 Q. It is a mere matter of computation, then?—A. A mere matter of computation.

Mr. KELLOGG. I offer in evidence Table No. 4 of the Bulletin of the Bureau of Labor, pages 427 to 453, inclusive.

By Mr. ROSENTHAL:

Q. Will you check up defendant's Exhibit 400 with the tables which Mr. Kellogg has just offered in evidence, for the purpose of determining whether or not defendants' Exhibit 400 is accurate?—A. I will do so.

Mr. KELLOGG. They may be considered accurate unless we notify you to the contrary.

Mr. ROSENTHAL. I am entirely willing, Mr. Kellogg, if you do not wish to print all of that table of the Bureau of Labor report, that the table may be considered in evidence and you may use the original, instead of reprinting it. Just as you please.

Mr. KELLOGG. It is stipulated that it need not be printed, and that the original volume may be used and considered in evidence.

Mr. CRAWFORD. Not the whole volume.

Mr. KELLOGG. Those tables, that is all.

Mr. ROSENTHAL. I offer in evidence defendants' Exhibit 400, subject to the agreement just made.

Mr. KELLOGG. I object to it as not proper cross-examination.

Q. I think it already appears, Mr. Durand, that you are Deputy Commissioner of the Bureau of Corporations; does it not?—A. I judge so. I think I testified to that fact. It is a fact.

Mr. KELLOGG. You asked him all about it.

14464 Q. You have written a large part or a substantial part of the various petroleum reports that have been issued by that bureau?—A. I have.

Q. And you have been devoting a very large part of your time during the last three or four years in connection with working up the evidence in this case, preparing it and assisting counsel?—A. I have I wish to add, however, that the first year and a half or two years the work I did in connection with oil had no relation to this case. The

case was not begun nor did I know or anticipate in any way that there would be any case brought.

Q. When did you begin your work on the petroleum situation?—A. I began investigating the petroleum situation inside the office, without any publicity, I think during 1904 or the latter part of 1903. I first made a public investigation by public methods in January, 1905.

Mr. KELLOGG. When did the bureau commence the investigation for these statistics?—A. The price statistics?

Mr. KELLOGG. Yes.—A. It was begun in the public way I spoke of in the first week of January, 1905, by sending circulars throughout the country asking for prices of oil.

Q. You have interviewed a great many witnesses who have testified in this case, have you not?—A. Yes, sir.

Q. And you have been present at practically all of the hearings from the beginning, have you not?—A. At the larger number. There were a few subjects that——

Q. Actively assisting Mr. Kellogg in the examination of
14465 the witnesses out of court and in the presentation of the testimony in court?—A. Yes.

Q. You have been sort of an assistant counsel?—A. I would hardly put it that way. That is hardly a fair statement.

Mr. KELLOGG. There is no objection to his telling what he has done.

WITNESS. I am not a lawyer, Mr. Rosenthal.

Mr. KELLOGG. He has given me valuable assistance—if you want that—and has done it fairly, too.

Q. So far as the development of the facts in this case is concerned, that is largely your accomplishment, is it not?—A. I have assisted in the development of the facts I think quite materially.

Q. You have been chief in that, haven't you?—A. I would not say that. I have cooperated with the lawyers. A large portion of the facts, or at least of the preliminary data leading to the facts, was acquired by the Bureau of Corporations under my direction before this case was begun.

Q. And they have been actively developing and acquiring those facts during the progress of the hearings?—A. The Bureau of Corporations?

Q. Yes, sir.—A. Practically only myself personally and Mr. Schindler and one or two others who have been more or less present at the trial. The Bureau of Corporations itself has not been so engaged in Washington.

Q. What others?—A. Mr. Pool and Mr. Schindler have devoted
considerable time to it. No others have devoted more than a
14466 very limited amount of time to it.

Q. Under your direction?—A. Under my direction and that of Commissioner Smith.

Q. And what other assistants of yours?—A. No others have devoted more than a very limited amount of time to the subject since the case began; not a great deal of time.

Q. Mr. Hunter has spent a great deal of time on the subject, hasn't he?—A. A considerable amount considering the relative size of the subject. He gave a great deal of time to that subject. He has not given any time to any other subject.

(It is admitted that petitioner's Exhibits 1041, 1042, and 1043, and 1044 were furnished by the Standard Oil Company and are correct.)

Mr. KELLOGG. I offer in evidence petitioner's Exhibits 1041, 1042, 1043, and 1044.

(It is agreed that petitioner's Exhibits 936–A, 936–B, 936–C, 936–D, 936–E, 936–F, 936–G, and 936–H are tank-wagon tickets of the Standard Oil Company; that they were issued in Washington, D. C., at the times and to the dealer they purport on their face; and the objections which were made to their introduction at the time that they were offered, on the grounds that they were not properly identified, are withdrawn.)

14467 *In the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri.*

UNITED STATES OF AMERICA, PETITIONER,
v.
STANDARD OIL COMPANY OF NEW JERSEY ET al., defendants.

It is hereby stipulated and agreed that petitioner's Exhibits numbered 859, 861, 862, 864, 865, 866, 867, 868, 870, 871, 873, 876, 882, 883, 884, 886, 888, 890, 891, 892, 895, 896, and 898 are letter press copies of letters, which press copies were shown to Mr. Collings while on the witness stand and which were identified by him as letter press copies of letters in the handwriting of Maywood Maxon, and that Exhibits numbered 860, 863, 869, 872, 874, 875, 877, 878, 879, 880, 881, 885, 887, 889, 893, 894, and 897 are letter press copies of letters which were shown to Mr. Collings while on the witness stand, but Mr. Collings was not able to say that the signatures thereto were the signatures of Maywood Maxon.

It is further stipulated and agreed that all of said exhibits are letter press copies of letters written by Maywood Maxon in the regular course of his employment by the Standard Oil Company of Kentucky and that they went out in the mails in the regular course of business to the persons to whom they were directed, and it is further agreed that these letter press copies may be used in evidence in place of the originals, the defendants reserving the right to object to them as immaterial but waiving the right to object to them because they are letter press copies and not the originals.

C. B. MORRISON,
Attorney for Petitioner.
MORITZ ROSENTHAL,
DOUGLAS CAMPBELL,
Attorney for Defendants.

14468 It is hereby stipulated that William R. King, if called to the stand in sur-rebuttal, would testify that the following tabulation, made up from the records of the Standard Oil Company, of New York, shows the changes in the open market price of the Standard Oil Company, of New York, for Water-White oil sold by tank wagon at Troy, N. Y., and also net margins for the years 1899 to 1905, inclusive, the price as shown at any one date in such tabulation remaining the same until the date of the next change, as shown in said tabulation:

Selling prices and net margins Water-White oil by tank wagon Troy, N. Y.

	Price.	Margin.
1899.		
July 15th	7.50	1.47
Oct. 6th	8.50	1.72
9th	9.00	2.22
1900.		
Jan. 25th	10.00	2.04
May 1st	9.00	1.79
June 15th	8.50	2.04
July 16th	8.00	1.55
Sep. 29th	7.00	1.06
1901.		
Oct. 11th	7.50	.93
1902.		
Jan. 13th	7.00	.44
Oct. 6th	7.50	.19
Nov. 1st	8.50	.69
13th	9.00	.69
Dec. 8th	10.00	1.19
1903.		
June 1st	9.00	1.10
Oct. 19th	10.00	1.42
Nov. 2nd	10.50	1.42
1904.		
Mar. 2nd	10.00	1.48
Apr. 27th	9.50	.98
Sep. 1st	10.00	1.51
1905.		
Jan. 9th	9.00	1.32
Feb. 6th	8.00	.57
13th	7.00	x .43
Sep. 18th	7.50	.18
Oct. 23rd	8.50	1.18

NOTE.—Numbers marked "x" indicate loss.

(A recess was here taken until 2 p. m.)

14470 C. C. BLACKMAN, called on behalf of the petitioner in rebuttal, being duly sworn, testified as follows:

Direct examination by Mr. KELLOGG:

Q. Give your full name, Mr. Blackman.—A. C. C. Blackman.

Q. What is your position with the Texas refineries or Texas Company?—A. Superintendent of the Port Arthur refinery.

Q. You have a refinery at Port Arthur, have you?—A. Yes, sir.

Q. And one at what other place?—A. Port Natchez, and a refinery at Dallas.

A. And a pipe line extending from Oklahoma (I think that already appears—the Glenn Pool—by other witnesses) to Port Arthur and Port Natchez?—A. Yes, sir.

Mr. CRAWFORD. Is that what is known as the Texas Pipe Line?

Mr. KELLOGG. The Texas Pipe Line.

Q. This is the Texas Company's line?—A. Yes, sir.

Q. It has a single 8-inch line from Oklahoma to Dallas?—A. Yes, sir.

Q. And from Dallas—what is the name of that place?—A. Humble.

Q. To Humble it is a 6-inch line?—A. Yes sir.

Q. And from Humble to the place where it separates—Garrison—to go to Port Natchez and to go to Port Arthur, it is what?—A. A 6-inch line, I think.

Mr. CRAWFORD. You mean "pipe" when you say "line," don't you?

14471 WITNESS. Yes, sir.

Q. A 6-inch pipe?—A. Yes, sir.

Mr. CRAWFORD. A single 8-inch pipe part of the way and a single 6-inch pipe the other part of the way?

WITNESS. Yes, sir.

Q. And at Garrison it separates, and a 6-inch line goes to Port Natchez?—A. Yes, sir.

Q. And the other to Port Arthur?—A. Yes, sir.

Q. A 6-inch line?—A. Yes, sir.

Q. You have a refinery at Dallas, you say?—A. Yes, sir.

Q. Do you take the crude oil that comes from Oklahoma and partially refine it there?—A. Yes, sir; at Dallas.

Q. What do you take off?—A. Take off the light stuff.

Q. Do you call it distillate?—A. Light distillate; yes, sir.

Q. What is the balance used for?—A. Fuel oil.

Q. What is the gravity of the distillate?—A. The gravity of the distillate is about 49.

Q. And the gravity of the crude oil averages about what?—A. About 33, I think; 32 to 34.

Q. Do you transport that distillate and the crude oil through the same line to Port Arthur, one following the other?—A. Yes, sir.

Q. The distillate follwing the crude and preceding the crude?—A. Yes, sir.

Q. In how large a quantity at a time, as near as you can recollect?—A. As far as Port Arthur is concerend, I suppose maybe in quantities of 37,000 barrels.

Q. A tankful—an ordinary tank?—A. Yes, sir.

14472 Q. What do you put between those to keep them from ing?—A. Water.

Q. How much?—A. I don't know the exact amount. I should between two and three hundred barrels of water.

Q. Does it mix at all with the water between it?—A. No, sir.

Q. And then you draw off the water and switch the line to other?—A. To another tank.

Q. From Port Natchez, where one of your refineries is, over to Port Arthur, where the other is, do you transport different kinds of distillates?—A. Yes, sir.

Q. Different gravities?—A. Different gravities.

Q. How much do they differ?—A. We get a gravity in the light distillates of about 37 to 38, and the heaviest would be about 49 gravity.

Q. You keep those separate in the same way?—A. In the same way.

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Mr. CRAWFORD. By water, do you mean?

WITNESS. By water.

Q. Do they mix at all?—A. Not that we can discover.

Q. Well, you are right there, and you are the expert, aren't you?—A. The gravities are the same at the start as they are at the finish.

Q. Do you also transport through the line, to your Port Natchez refinery, different grades of crude?—A. To Port Arthur?

Q. To Port Natchez.

Mr. CRAWFORD. From where?

14473 Mr. KELLOGG. From above; either Oklahoma or——

WITNESS. I think so.

Mr. CRAWFORD. Are they not all graded as one?

Mr. KELLOGG. They have Texas oil and Louisiana oil.

Q. Describe the different grades.

Mr. CRAWFORD. Where are you speaking of that you transport from?

WITNESS. I think they take oil at the Port Natchez refinery from Jennings, Louisiana, and from Sour Lake, Texas.

Q. Have they different grades of oil?—A. Yes, sir: there is a difference in gravity.

Mr. CRAWFORD. How much difference?

WITNESS. I think about 2 or 3 degrees, perhaps.

Q. Do they also transport the crude oil from Oklahoma and the Sour Lake oil to Port Arthur?—A. I think so: not the Sour Lake. They don't get any Sour Lake oil at Port Arthur.

Q. What kind of crudes do they transport to Port Arthur?—A. To Port Arthur we get Oklahoma crude.

Q. But you don't transport any of the Texas?—A. We don't use any Texas crude at Port Arthur.

Q. You have a line which you use for refined oil, do you not?—A. Yes.

Q. How do you keep those separate?—A. We keep those separate simply letting one grade of oil follow another.

Mr. CRAWFORD. What do you mean by those?"

Mr. KELLOGG. The different grades of refined oil for export and for shipment.

Mr. CRAWFORD. What is the difference between the gravity of those grades?

WITNESS. We put gasoline down there at 68 gravity, and if we follow it up with naphtha it would be 58 gravity.

Q. Well, you do that, do you?—A. Yes, sir.

Q. Do it right along?—A. Yes, sir.

Q. That is a short line?—A. Three miles.

Q. You have had considerable experience in conducting oils of different gravities through the line, Mr. Blackman?—A. Some; yes, sir.

Q. In your opinion is it entirely practicable to follow one grade of crude oil with another grade of crude oil through the same lines

without their mixing to any extent that would be impracticable in the use of manufacture?

Mr. CRAWFORD. I object to that question upon the ground that the witness has not been qualified as an expert, nor shown to be competent to answer the question in any way whatsoever except as limited by the precise conditions and pipes and distances as to which he has testified.

A. I think it is practicable.

Q. How far is it from Dallas down to Port Arthur?—A. I think the distance is very nearly 300 miles.

Q. About how frequent are your pumping stations?—A. I think they are about 50 miles apart.

Q. As I understand you, you think it is entirely practicable to follow one grade of crude oil with another grade of crude oil without mixing to any great extent?

14475 Mr. CRAWFORD. Same objection.

A. Yes.

Cross-examination by Mr. CRAWFORD:

Q. Are you the superintendent of the pipe lines you have been speaking of?—A. No, sir.

Q. What is your position?—A. Superintendent of the refinery.

Q. What have you to do with the management of the pipe lines?—A. Nothing at all.

Q. Where do you derive your information, then, as to the amount of mixture or the absence of mixture between the different grades of distillate that are sent through the line?—A. Well, it is just an opinion of mine. It is not founded on any absolute facts.

Q. I see. It is what other people have told you, is it?—A. Yes.

Mr. KELLOGG. Just explain what knowledge you have of how the oils come out. Give all the information you have on that subject.

Mr. CRAWFORD. I am satisfied with the answer. I have no further questions.

By Mr. KELLOGG:

Q. Now, you know the grades of the oil as they come out, don't you? It is your business to know that?—A. Yes, sir.

Q. Well, do you know the grades of oil as they are delivered to you?—A. Well, I would know by taking the gravity of them.

Q. You have the gravity taken, don't you?—A. Yes.

14476 Q. And you are familiar with those gravities?—A. Yes, sir.

Q. And do you know how these different oils are delivered—the gravity in which they are delivered to you? Do you have reports on them?

Mr. CRAWFORD. I object to the reports, especially when they are not produced.

A. Yes.

Q. You have men there to take the gravity, do you not?—A. Yes, sir.

Q. I mean by that, is it a part of your business to know the gravity of the separate batches of oil that are delivered to you?—A. Yes, sir; in a general way.

By Mr. CRAWFORD.

Q. Do you take the gravities yourself?—A. No, sir.

Q. And you have nothing whatsoever to do with the pipe lines?—A. No.

Q. You do not take the gravity at the end where the oils are introduced into the pipe line?—A. No.

Q. All the information you get is from others?—A. Yes.

By Mr. KELLOGG.

Q. Who furnishes you the gravity of the distillate that is pumped?—A. The pipe line department.

Q. Is it furnished to you in the regular course of business?

Mr. CRAWFORD. That is objected to as incompetent and hearsay.

A. Yes.

14477 Q. Furnished to your office, is it?—A. Yes, sir.

Mr. CRAWFORD. Same objection.

It was stipulated by counsel for respective parties that the oil cans offered in evidence by the defendants need not be filed with the clerk of the court as exhibits.

14478 It is admitted that the following statement shows the average operating expenses of converting crude oil into finished products ready for market, at all of the refineries owned or controlled by the Standard Company or the Standard Oil trustees except the refinery at Richmond, Cal., during the years specified, including all the processes of the manufacture of by-products at said refineries, aside from the items of expense specifically mentioned, which are not included in the cost statements kept by the Standard Oil Company, and except the cost of making candles and greases and compounding oils:

Cost statement.

(Excluding Richmond, Cal.)

1890	17.33¢
1895	16.31
1900	19.61
1904	20.84
1906	17.85

Many items of cost are not included in the above, such as: Interest on investment in land, tankage and plants, general expense of management, depreciation of plants, bulk shipping expense, taxes, fire losses, pensions, royalties, legal expense.

14479 It is admitted that the following statement shows, for the years specified, the percentage of the liquid products of petroleum, including paraffine wax, derived from all the crude oil refined by the several refineries owned or controlled by the Standard Oil Company and the Standard Oil trustees, except the refinery at Rich-

mond, Cal.; that is to say, for example, that during the year 1906 the quantity of liquid products, including paraffine wax, produced by said refineries was equal to 94.27 per cent of the crude oil handled by them:

Yield statement.

(Excluding Richmond, Cal.)

1890	95.23¢
1895	95.20
1900	94.80
1904	94.11
1906	94.27

14480 Mr. KELLOGG. I offer in evidence, in order that they may be made a part of the record and returned to and filed in the office of the clerk of the Circuit Court of the United States for the Eastern Division of the Eastern District of Missouri, certified copies of the original subpœnas issued in this case from the office of the clerk of the United States Court for the Southern District of New York, for the following witnesses: William H. Tilford, F. Q. Barstow, William G. Rockefeller, William P. Howe, C. M. Pratt, Charles T. White, Wade Hampton, John Bushnell, William A. Harris, Henry M. Flagler, and Wade Hampton, together with the return showing which ones were served and which were not.

The documents above referred to are in the words and figures following, to wit:

I hereby certify that on the 13th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named William G. Rockefeller, individually and as assistant treasurer of the Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify that on the 13th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named William P. Howe, individually and as assistant treasurer of the Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to
14481 him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify that on the 13th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named C. M. Pratt, individually and as secretary of the Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify that on the 15th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named F. Q. Barstow, individually and as assistant treasurer of the Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify that on the 28th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named Wade Hampton, individually and as an employe of the Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

I hereby further certify that on the 29th day of August, 1907, at the city of New York, in my district, I personally served the within subpœna duces tecum upon the within-named Charles T. White, individually and as assistant secretary of Standard Oil Company of New Jersey, at No. 26 Broadway, New York City, by exhibiting to
14482 him the within original, and at the same time leaving with him a copy thereof.

Dated New York, Sept. 4, 1907.

WILLIAM HENKEL,
U. S. Marshal.

The President of the United States of America to—

Wesley H. Tilford, individually and as treasurer of Standard Oil Company, of New Jersey;

F. Q. Barstow, individually and as assistant treasurer of Standard Oil Company, of New Jersey;

William G. Rockefeller, individually and as assistant treasurer of Standard Oil Company, of New Jersey;

William P. Howe, individually and as assistant treasurer of Standard Oil Company, of New Jersey;

C. M. Pratt, individually and as secretary of Standard Oil Company, of New Jersey;

Charles T. White, individually and as assistant secretary of Standard Oil Company, of New Jersey; and

Wade Hampton, individually and as an employe of Standard Oil Company, of New Jersey.

Greeting:

We command you, and each of you, that all business and excuses being laid aside, you appear and attend before Franklin Ferris, a special examiner appointed by the Circuit Court of the United States of America for the Eastern Division of the Eastern Judicial District of Missouri, at room No. 43, second floor of the General Post-Office Building, in the borough of Manhattan, in the city of New York, in the State of New York, on the 2nd day of September, 1907, at 10 o'clock in the forenoon, to testify and give evidence in a certain action now pending undetermined in the Circuit Court of
14483 the United States for the Eastern Division of the Eastern Judicial District of Missouri, between the United States of America, as petitioner, and Standard Oil Company, of New Jersey, and others as defendants, on the part of the petitioner, and that you bring with you and produce at the time and place aforesaid the following books, papers, and documents kept by or under the control

of the Standard Oil Company, of New Jersey, or by you, or either of you, or under your direction, to wit:

(1) The stock books and stock ledgers showing the total amount of capital stock of the Standard Oil Company, of New Jersey, issued and outstanding, together with the names of the holders thereof, and the amount of such holdings, respectively.

(2) All the books, records, papers, and memoranda showing the stocks, bonds, and other securities of other corporations and limited partnerships owned, controlled, or held in trust or otherwise, by the Standard Oil Company, of New Jersey, or held or owned in the name of any person, persons, corporation, or partnership for the Standard Oil Company, of New Jersey.

(3) All certificates of stock, or other instruments evidencing ownership or any beneficial interest in corporations, partnerships, and limited partnerships owned by the Standard Oil Company of New Jersey, or by any person or corporation in its behalf.

(4) All books, records, papers, and memoranda showing the dates of acquisition of any such stocks, bonds, and other securities, and of whom acquired—this to include all such stocks, bonds, and other securities acquired since January 1, 1899.

14484 (5) That certain agreement, made and entered into on or about the 9th day of October, 1883, by and between the Standard Oil Company of Ohio, the Standard Oil Company of New York, and the Standard Oil Company of New Jersey, collectively as one party, and the Ocean Oil Company, the Chester Oil Company, and Ayres, Lombar & Company, collectively constituting the party of the other part; together with that certain other agreement, connected therewith and forming a part thereof, purporting to have been made and entered into on or about the same date, by and between the National Transit Company and the United Pipe Lines (each being a corporation of the State of Pennsylvania), parties of the first part, and the Tidewater Pipe Company, Limited (a limited partnership formed under the laws of Pennsylvania), party of the second part; which said contracts are attached to the petition in the above-entitled action, marked "Exhibit 13;" and by which there was purported to have been entered into an agreement for a division of the business of gathering, transporting, manufacturing, exporting, shipping, and selling petroleum and the products thereof, between the said parties to said contracts, and various other refineries engaged with each of said parties.

(6) All record books, showing the proceedings of the board of directors and of the stockholders of said Standard Oil Company, of New Jersey, in relation to said contracts or either of them last above set out, and in relation to all division of the business of gathering crude oil, transporting the same by pipe line, manufacturing, shipping, exporting, and selling the same, between any of the parties to said contract or between the said Standard Oil Company, of

14485 New Jersey, and any refineries connected or associated with said company.

(7) All books and records showing the proceedings of the board of directors and of the stockholders of said Standard Oil Company of New Jersey, in relation to any agreement or understanding between said company and the Tidewater Pipe Company, Limited, or any company or corporation connected with the same and parties to the above-entitled action, showing any division of business between the said Standard Oil Company of New Jersey, the Tidewater Pipe Company, Limited, and any refiner or company engaged in refining oil connected with either of said companies.

(8) All books, records, and papers showing the total assets and liabilities, and the gross and net profits of the Standard Oil Company of New Jersey for each business year, from and including January 1, 1899, down to the present time, and showing in detail all the principal items of such accounts, in the usual manner in which they are kept by said company, including the value of the stock or other securities of every corporation, limited partnership, or firm in which the Standard Oil Company of New Jersey has or owns any proprietary or beneficial interest, and including the dividends, interest, or other income derived by said Standard Oil Company of New Jersey from each and every such corporation, limited partnership, or firm.

(9) All books, records, and papers showing the total assets and liabilities, and the gross and net profits for each business year, from and including January 1, 1899, down to the present time, of each and every defendant corporation and limited partnership in the above-entitled action; also of each and every corporation, limited partnership, and partnership in which the Standard Oil Company of New Jersey has any interest, directly or indirectly, either through stock ownership or otherwise; also of all corporations, limited partnerships, and partnerships which report their assets, profits, and businesses, or either or any part thereof, directly or indirectly, to the defendant Standard Oil Company of New Jersey.

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(10) All the stock books, stock ledgers, and other books, showing:

(a) The amount of stock or other securities of any corporation or limited partnership received by the Standard Oil Company, of New Jersey, during the year 1899, and from whom the said certificates of stock and other securities were received, and the dates thereof.

(b) All trustee certificates issued by the trustees of the Standard Oil Trust, received by the Standard Oil Company, of New Jersey, during said time.

(c) All liquidating certificates issued by the liquidating trustees of the Standard Oil Trust, received by the Standard Oil Company, of New Jersey, during said time.

(d) All assignments of legal title to stocks and securities issued by the trustees of the Standard Oil Trust, or by said liquidating trustees of the Standard Oil Trust, received by the Standard Oil Company, of New Jersey, during said time.

(11) All trustees' certificates issued by the trustees of the Standard Oil Trust or by the liquidating trustees of said Standard Oil Trust, and the assignments of interest in the stocks and
14487 securities of constituent corporations issued by the said trustees and now in the possession of the Standard Oil Company, of New Jersey.

(12) All books showing the manner and the basis of the exchange of the stock of the Standard Oil Company, of New Jersey, during the year 1899, for the stocks of the various corporations and limited partnerships previously held by the trustees of the Standard Oil Trust.

And hereof fail not under penalty of law.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, this 8th day of August, 1907.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

I hereby certify that on the 13th day of September, 1907, at the city of New York, in my district, I personally served the within subp. duces tecum upon the within-named Wesley H. Tilford, individually and as treasurer of Standard Oil Co., of New Jersey, at No. 26 Broadway, New York City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated Sep. 13, 1907.

(Indorsed:) U. S. Circuit Court, Southern District N. Y. Filed Mar. 5, 1908. John A. Shields, Clerk.

A copy.

(Signed) JOHN A. SHIELDS, *Clerk.*

[Seal of U. S. Circuit Court, South. Dist., New York.]

14488 *The President of the United States of America, to—*

John Bushnell, individually and as secretary of the National Transit Company; and

William A. Harris, individually and as treasurer of the National Transit Company.

[L. S.]

Greeting:

We command you and each of you that, all business and excuses being laid aside, you appear and attend before Franklin Ferris, a special examiner appointed by the Circuit Court of the United States of America for the Eastern Division of the Eastern Judicial District of Missouri, at Room No. 43, second floor, of the General Post-Office Building, in the Borough of Manhattan, in the city of New York, in the State of New York, on the 3rd day of September, 1907, at 10 o'clock in the forenoon, to testify and give evidence in a certain action now pending undetermined in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial

District of Missouri, between United States of America, as petitioner, and Standard Oil Company, of New Jersey, and others, as defendants, on the part of the petitioner, and that you bring with you and produce at the time and place aforesaid the following books, papers, and documents, now kept by or under the control of the National Transit Company, or by you or either of you, or under your direction, more particularly described as follows, to wit:

(1) That certain agreement made and entered into on or about the 9th day of October, 1883, by and between the National
14489 Transit Company and the United Pipe Lines (each being a corporation of the State of Pennsylvania) parties of the first part, and the Tidewater Pipe Company, Limited (a limited partnership association formed under the laws of Pennsylvania), party of the second part; together with that certain other agreement connected therewith, made and entered into by and between the Standard Oil Company, of Ohio; the Standard Oil Company, of New York; and the Standard Oil Company, of New Jersey, collectively constituting the party of the first part, and the Ocean Oil Company, the Chester Oil Company, and Ayres, Lombard & Company, collectively constituting the party of the second part; said agreement being attached to the petition herein, marked "Exhibit 13," showing a division of business between the parties thereto.

(2) The record books containing the minutes of the meetings of the board of directors and of the stockholders, showing any and all action taken in relation to said contract above set out, or in relation to any contract between said National Transit Company and the Tidewater Pipe Company, Limited, relating to any division of business between said companies.

(3) The books of account of said National Transit Company, showing the payment of any sums of money made to the Tidewater Pipe Company, Limited, by the National Transit Company or the United Pipe Lines for the equalization of profits under said agreement Exhibit 13 to the bill of complaint, or the payment of any sums to make the profits of said Tidewater Pipe Company, Limited,
14490 and its associated refineries equal to the sum of $500,000 per annum, as provided by said contract, and showing the division of business between said companies during the existence of said contract from the date the same went into effect, to wit, October 1st, 1883, to the present time.

(4) The original, or copies, of those two certain contracts attached to the bill of complaint herein as Exhibits 8 and 9—Exhibit 8 being a letter written by Daniel O'Day, general manager of the American Transfer Company, to A. J. Cassatt, esq., third vice-president of the Pennsylvania Railroad Company, dated February 15, 1878, together with a letter of A. J. Cassatt to Daniel O'Day, dated May 15, 1878, and a further letter from the said Cassatt to the said Daniel O'Day, dated May 15, 1878—Exhibit 9 being a memorandum contract between the American Transfer Company and the Erie Railway Company for the payment of rebates by the said Erie Railway Company to

the American Transfer Company, together with the books of account showing all payments and rebates to the Pennsylvania Railroad Company and to the Erie Railway Company by the American Transfer Company under and pursuant to the said contracts, Exhibits 8 and 9.

(5) A certain contract entered into on September 4, 1874, by and between The United Pipe Lines, The Sandy & Milton Lines, The Relief Pipe Line Company, The American Transfer Company, The Union Pipe Line Company, The Grant Pipe Company, The Karns Pipe Line Company, The Antwerp Pipe Company, The Oil
14491 City Pipe Company, and the Pennsylvania Transportation Company, for a division of business and agreed rates of pipage.

And hereof fail not under penalty of law.

Witness, the Hon. Melville W. Fuller, chief justice of the United States, at the Borough of Manhattan, in the city of New York, the 8th day of August, 1907.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

I hereby certify that on the 12th day of August, 1907, at the city of New York, in my district, I personally served the within subp. duces tecum upon the within-named defendant, William A. Harris, individually and as treasurer of the National Transit Co., at 26 Broadway, N. Y. City, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

U. S. Circuit Court, Southern District of N. Y. Filed Mar. 5, 1908. John A. Shields, clerk.

A copy. JOHN A. SHIELDS, *Clerk.*

[Seal of U. S. Circuit Court, South. Dist. New York.]

14492 *The President of the United States of America, to—*

Henry M. Flagler, individually and as secretary of trustees and of the liquidating trustees of the Standard Oil Trust, and

Wade Hampton, individually and as an employee of the trustees and of the liquidating trustees of the Standard Oil Trust:

[L. S.]

Greeting:

We command you and each of you, that all business and excuses being laid aside, you appear and attend before Franklin Ferriss, a special examiner appointed by the Circuit Court of the United States of America for the Eastern Division of the Eastern Judicial District of Missouri, at Room No. 43, second floor, of the General Post-Office Building, in the borough of Manhattan, in the city of New York, State of New York, on the 3rd day of September, 1907, at 10 o'clock in the forenoon, to testify and give evidence in a certain action now pending undetermined in the Circuit Court of the United States for the Eastern Division of the Eastern Judicial District of Missouri,

between United States of America, as petitioner, and Standard Oil Company, of New Jersey, and others, as defendants, on the part of the petitioner, and that you bring with you and produce at the time and place aforesaid, the following books, papers, and documents kept by the said trustees and liquidating trustees, or by you the said Henry M. Flagler and Wade Hampton, or under the direction of you or either of you, more particularly described as follows, to-wit:

14493 (1) The record books of the trustees of the Standard Oil Company under the agreement dated January 2, 1882, and the amendment thereto, dated January 4, 1882, showing, for the full term of its existence, the proceedings at the several meetings of the said trustees. Also the books, records, and accounts kept by said trustees, or under their direction, showing all stocks, bonds, and other securities of corporations and limited partnerships held by said trustees under and by virtue of said agreements; the date of receipt of the same; and the final distribution and disposition made by said trustees of said stocks and securities.

(2) The record books of the liquidating trustees of the said Standard Oil Trust, showing the proceedings of the said trustees in liquidation at their various meetings from the date of the commencement of said liquidation, March 21, 1892, until the said trust was completely liquidated, and showing the process of liquidation. Also the books or other records of the trustees in liquidation, showing the persons to whom evidences of ownership in the property represented by the said trust were issued in exchange for trustee certificates previously held by them, and showing the quantity or amount of interest so transferred, and the amount of interest so acquired in the various constituent companies by such transfer or exchange by each person.

And herein fail not under penalty of law.

14494 Witness, the Hon. Melville W. Fuller, Chief Justice of the United States, at the borough of Manhattan, in the city of New York, the 8th day of August, 1907.

[SEAL.] JOHN A. SHIELDS, *Clerk.*

I hereby certify that on the 29th day of August, 1907, at the city of New York, in my district, I personally served the within subp. duces tecum, upon the within-named Wade Hampton individually and as an employee of the trustees and of the liquidating trustees of the Standard Oil Trust, at 26 Broadway, New York, by exhibiting to him the within original, and at the same time leaving with him a copy thereof.

WILLIAM HENKEL,
United States Marshal, Southern District of New York.

Dated Aug. 28, 1907.

U. S. Circuit Court, Southern District N. Y. Filed Mar. 5, 1908. John A. Shields, Clerk.

A copy. JOHN A. SHIELDS, *Clerk.*

[Seal of U. S. Circuit Court, South. Dist. New York.]

14495 Mr. KELLOGG. It is agreed that this case may be adjourned to the office of the clerk of the United States Circuit Court, at the city of St. Louis, until the 29th day of January, 1909, at 10.30 a. m., with the understanding that if the Government has any further testimony to offer it will notify Mr. Rosenthal in Chicago, and meet here instead of St. Louis at that time. If no further testimony is offered, the case is closed, and the examiner may make the entry without the appearance of counsel.

Mr. ROSENTHAL. That is agreeable to counsel for the defense.

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